

As Introduced

**127th General Assembly
Regular Session
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H. B. No. 51

Representative Evans

**Cosponsors: Representatives McGregor, J., Combs, Dodd, Okey, Fessler,
Fende**

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A B I L L

To amend sections 2743.02 and 2744.01 and to enact 1
section 4510.121 of the Revised Code to permit a 2
person who is issued a ticket for operating a 3
motor vehicle other than a commercial motor 4
vehicle with an expired driver's or commercial 5
driver's license to be issued a seven-day field 6
driving permit. 7

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

Section 1. That sections 2743.02 and 2744.01 be amended and 8
section 4510.121 of the Revised Code be enacted to read as 9
follows: 10

Sec. 2743.02. (A)(1) The state hereby waives its immunity 11
from liability, except as provided for the office of the state 12
fire marshal in division (G)(1) of section 9.60 and division (B) 13
of section 3737.221 of the Revised Code and except as provided in 14
division (I) of this section and subject to division (H) of this 15
section, and consents to be sued, and have its liability 16
determined, in the court of claims created in this chapter in 17
accordance with the same rules of law applicable to suits between 18

private parties, except that the determination of liability is 19
subject to the limitations set forth in this chapter and, in the 20
case of state universities or colleges, in section 3345.40 of the 21
Revised Code, and except as provided in division (A)(2) or (3) of 22
this section. To the extent that the state has previously 23
consented to be sued, this chapter has no applicability. 24

Except in the case of a civil action filed by the state, 25
filing a civil action in the court of claims results in a complete 26
waiver of any cause of action, based on the same act or omission, 27
which the filing party has against any officer or employee, as 28
defined in section 109.36 of the Revised Code. The waiver shall be 29
void if the court determines that the act or omission was 30
manifestly outside the scope of the officer's or employee's office 31
or employment or that the officer or employee acted with malicious 32
purpose, in bad faith, or in a wanton or reckless manner. 33

(2) If a claimant proves in the court of claims that an 34
officer or employee, as defined in section 109.36 of the Revised 35
Code, would have personal liability for the officer's or 36
employee's acts or omissions but for the fact that the officer or 37
employee has personal immunity under section 9.86 of the Revised 38
Code, the state shall be held liable in the court of claims in any 39
action that is timely filed pursuant to section 2743.16 of the 40
Revised Code and that is based upon the acts or omissions. 41

(3)(a) Except as provided in division (A)(3)(b) of this 42
section, the state is immune from liability in any civil action or 43
proceeding involving the performance or nonperformance of a public 44
duty, including the performance or nonperformance of a public duty 45
that is owed by the state in relation to any action of an 46
individual who is committed to the custody of the state. 47

(b) The state immunity provided in division (A)(3)(a) of this 48
section does not apply to any action of the state under 49
circumstances in which a special relationship can be established 50

between the state and an injured party. A special relationship 51
under this division is demonstrated if all of the following 52
elements exist: 53

(i) An assumption by the state, by means of promises or 54
actions, of an affirmative duty to act on behalf of the party who 55
was allegedly injured; 56

(ii) Knowledge on the part of the state's agents that 57
inaction of the state could lead to harm; 58

(iii) Some form of direct contact between the state's agents 59
and the injured party; 60

(iv) The injured party's justifiable reliance on the state's 61
affirmative undertaking. 62

(B) The state hereby waives the immunity from liability of 63
all hospitals owned or operated by one or more political 64
subdivisions and consents for them to be sued, and to have their 65
liability determined, in the court of common pleas, in accordance 66
with the same rules of law applicable to suits between private 67
parties, subject to the limitations set forth in this chapter. 68
This division is also applicable to hospitals owned or operated by 69
political subdivisions which have been determined by the supreme 70
court to be subject to suit prior to July 28, 1975. 71

(C) Any hospital, as defined in section 2305.113 of the 72
Revised Code, may purchase liability insurance covering its 73
operations and activities and its agents, employees, nurses, 74
interns, residents, staff, and members of the governing board and 75
committees, and, whether or not such insurance is purchased, may, 76
to such extent as its governing board considers appropriate, 77
indemnify or agree to indemnify and hold harmless any such person 78
against expense, including attorney's fees, damage, loss, or other 79
liability arising out of, or claimed to have arisen out of, the 80
death, disease, or injury of any person as a result of the 81

negligence, malpractice, or other action or inaction of the 82
indemnified person while acting within the scope of the 83
indemnified person's duties or engaged in activities at the 84
request or direction, or for the benefit, of the hospital. Any 85
hospital electing to indemnify such persons, or to agree to so 86
indemnify, shall reserve such funds as are necessary, in the 87
exercise of sound and prudent actuarial judgment, to cover the 88
potential expense, fees, damage, loss, or other liability. The 89
superintendent of insurance may recommend, or, if such hospital 90
requests the superintendent to do so, the superintendent shall 91
recommend, a specific amount for any period that, in the 92
superintendent's opinion, represents such a judgment. This 93
authority is in addition to any authorization otherwise provided 94
or permitted by law. 95

(D) Recoveries against the state shall be reduced by the 96
aggregate of insurance proceeds, disability award, or other 97
collateral recovery received by the claimant. This division does 98
not apply to civil actions in the court of claims against a state 99
university or college under the circumstances described in section 100
3345.40 of the Revised Code. The collateral benefits provisions of 101
division (B)(2) of that section apply under those circumstances. 102

(E) The only defendant in original actions in the court of 103
claims is the state. The state may file a third-party complaint or 104
counterclaim in any civil action, except a civil action for two 105
thousand five hundred dollars or less, that is filed in the court 106
of claims. 107

(F) A civil action against an officer or employee, as defined 108
in section 109.36 of the Revised Code, that alleges that the 109
officer's or employee's conduct was manifestly outside the scope 110
of the officer's or employee's employment or official 111
responsibilities, or that the officer or employee acted with 112
malicious purpose, in bad faith, or in a wanton or reckless manner 113

shall first be filed against the state in the court of claims, 114
which has exclusive, original jurisdiction to determine, 115
initially, whether the officer or employee is entitled to personal 116
immunity under section 9.86 of the Revised Code and whether the 117
courts of common pleas have jurisdiction over the civil action. 118
The officer or employee may participate in the immunity 119
determination proceeding before the court of claims to determine 120
whether the officer or employee is entitled to personal immunity 121
under section 9.86 of the Revised Code. 122

The filing of a claim against an officer or employee under 123
this division tolls the running of the applicable statute of 124
limitations until the court of claims determines whether the 125
officer or employee is entitled to personal immunity under section 126
9.86 of the Revised Code. 127

(G) Whenever a claim lies against an officer or employee who 128
is a member of the Ohio national guard, and the officer or 129
employee was, at the time of the act or omission complained of, 130
subject to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 131
U.S.C. 2671, et seq., then the Federal Tort Claims Act is the 132
exclusive remedy of the claimant and the state has no liability 133
under this section. 134

(H) If an inmate of a state correctional institution has a 135
claim against the state for the loss of or damage to property and 136
the amount claimed does not exceed three hundred dollars, before 137
commencing an action against the state in the court of claims, the 138
inmate shall file a claim for the loss or damage under the rules 139
adopted by the director of rehabilitation and correction pursuant 140
to this division. The inmate shall file the claim within the time 141
allowed for commencement of a civil action under section 2743.16 142
of the Revised Code. If the state admits or compromises the claim, 143
the director shall make payment from a fund designated by the 144
director for that purpose. If the state denies the claim or does 145

not compromise the claim at least sixty days prior to expiration 146
of the time allowed for commencement of a civil action based upon 147
the loss or damage under section 2743.16 of the Revised Code, the 148
inmate may commence an action in the court of claims under this 149
chapter to recover damages for the loss or damage. 150

The director of rehabilitation and correction shall adopt 151
rules pursuant to Chapter 119. of the Revised Code to implement 152
this division. 153

(I) The state is immune from liability in any civil action or 154
proceeding arising from any incident or set of facts or 155
circumstances that involve a person to whom a state highway patrol 156
trooper has issued a seven-day field driving permit under section 157
4510.121 of the Revised Code and that occurs subsequent to such 158
issuance. 159

Sec. 2744.01. As used in this chapter: 160

(A) "Emergency call" means a call to duty, including, but not 161
limited to, communications from citizens, police dispatches, and 162
personal observations by peace officers of inherently dangerous 163
situations that demand an immediate response on the part of a 164
peace officer. 165

(B) "Employee" means an officer, agent, employee, or servant, 166
whether or not compensated or full-time or part-time, who is 167
authorized to act and is acting within the scope of the officer's, 168
agent's, employee's, or servant's employment for a political 169
subdivision. "Employee" does not include an independent contractor 170
and does not include any individual engaged by a school district 171
pursuant to section 3319.301 of the Revised Code. "Employee" 172
includes any elected or appointed official of a political 173
subdivision. "Employee" also includes a person who has been 174
convicted of or pleaded guilty to a criminal offense and who has 175
been sentenced to perform community service work in a political 176

subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C)(1) "Governmental function" means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

(e) The regulation of the use of, and the maintenance and

repair of, roads, highways, streets, avenues, alleys, sidewalks,	207
bridges, aqueducts, viaducts, and public grounds;	208
(f) Judicial, quasi-judicial, prosecutorial, legislative, and	209
quasi-legislative functions;	210
(g) The construction, reconstruction, repair, renovation,	211
maintenance, and operation of buildings that are used in	212
connection with the performance of a governmental function,	213
including, but not limited to, office buildings and courthouses;	214
(h) The design, construction, reconstruction, renovation,	215
repair, maintenance, and operation of jails, places of juvenile	216
detention, workhouses, or any other detention facility, as defined	217
in section 2921.01 of the Revised Code;	218
(i) The enforcement or nonperformance of any law;	219
(j) The regulation of traffic, and the erection or	220
nonerection of traffic signs, signals, or control devices;	221
(k) The collection and disposal of solid wastes, as defined	222
in section 3734.01 of the Revised Code, including, but not limited	223
to, the operation of solid waste disposal facilities, as	224
"facilities" is defined in that section, and the collection and	225
management of hazardous waste generated by households. As used in	226
division (C)(2)(k) of this section, "hazardous waste generated by	227
households" means solid waste originally generated by individual	228
households that is listed specifically as hazardous waste in or	229
exhibits one or more characteristics of hazardous waste as defined	230
by rules adopted under section 3734.12 of the Revised Code, but	231
that is excluded from regulation as a hazardous waste by those	232
rules.	233
(l) The provision or nonprovision, planning or design,	234
construction, or reconstruction of a public improvement,	235
including, but not limited to, a sewer system;	236

(m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;	237 238 239
(n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;	240 241 242 243 244 245 246 247
(o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;	248 249 250
(p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;	251 252 253 254 255 256 257 258
(q) Urban renewal projects and the elimination of slum conditions;	259 260
(r) Flood control measures;	261
(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;	262 263
(t) The issuance of revenue obligations under section 140.06 of the Revised Code;	264 265
(u) The design, construction, reconstruction, renovation,	266

repair, maintenance, and operation of any school athletic	267
facility, school auditorium, or gymnasium or any recreational area	268
or facility, including, but not limited to, any of the following:	269
(i) A park, playground, or playfield;	270
(ii) An indoor recreational facility;	271
(iii) A zoo or zoological park;	272
(iv) A bath, swimming pool, pond, water park, wading pool,	273
wave pool, water slide, or other type of aquatic facility;	274
(v) A golf course;	275
(vi) A bicycle motocross facility or other type of	276
recreational area or facility in which bicycling, skating, skate	277
boarding, or scooter riding is engaged;	278
(vii) A rope course or climbing walls;	279
(viii) An all-purpose vehicle facility in which all-purpose	280
vehicles, as defined in section 4519.01 of the Revised Code, are	281
contained, maintained, or operated for recreational activities.	282
(v) The provision of public defender services by a county or	283
joint county public defender's office pursuant to Chapter 120. of	284
the Revised Code;	285
(w)(i) At any time before regulations prescribed pursuant to	286
49 U.S.C.A 20153 become effective, the designation, establishment,	287
design, construction, implementation, operation, repair, or	288
maintenance of a public road rail crossing in a zone within a	289
municipal corporation in which, by ordinance, the legislative	290
authority of the municipal corporation regulates the sounding of	291
locomotive horns, whistles, or bells;	292
(ii) On and after the effective date of regulations	293
prescribed pursuant to 49 U.S.C.A. 20153, the designation,	294
establishment, design, construction, implementation, operation,	295
repair, or maintenance of a public road rail crossing in such a	296

zone or of a supplementary safety measure, as defined in 49 297
U.S.C.A 20153, at or for a public road rail crossing, if and to 298
the extent that the public road rail crossing is excepted, 299
pursuant to subsection (c) of that section, from the requirement 300
of the regulations prescribed under subsection (b) of that 301
section. 302

(x) Issuance of a seven-day field driving permit under 303
section 4510.121 of the Revised Code by a law enforcement officer 304
employed by a law enforcement agency of a political subdivision; 305

(y) A function that the general assembly mandates a political 306
subdivision to perform. 307

(D) "Law" means any provision of the constitution, statutes, 308
or rules of the United States or of this state; provisions of 309
charters, ordinances, resolutions, and rules of political 310
subdivisions; and written policies adopted by boards of education. 311
When used in connection with the "common law," this definition 312
does not apply. 313

(E) "Motor vehicle" has the same meaning as in section 314
4511.01 of the Revised Code. 315

(F) "Political subdivision" or "subdivision" means a 316
municipal corporation, township, county, school district, or other 317
body corporate and politic responsible for governmental activities 318
in a geographic area smaller than that of the state. "Political 319
subdivision" includes, but is not limited to, a county hospital 320
commission appointed under section 339.14 of the Revised Code, 321
board of hospital commissioners appointed for a municipal hospital 322
under section 749.04 of the Revised Code, board of hospital 323
trustees appointed for a municipal hospital under section 749.22 324
of the Revised Code, regional planning commission created pursuant 325
to section 713.21 of the Revised Code, county planning commission 326
created pursuant to section 713.22 of the Revised Code, joint 327

planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, community school established under Chapter 3314. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

(G)(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.	360 361 362
(2) A "proprietary function" includes, but is not limited to, the following:	363 364
(a) The operation of a hospital by one or more political subdivisions;	365 366
(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;	367 368 369
(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;	370 371 372 373
(d) The maintenance, destruction, operation, and upkeep of a sewer system;	374 375
(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.	376 377 378
(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.	379 380 381 382 383
(I) "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, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.	384 385 386 387 388 389

Sec. 4510.121. (A) If a law enforcement officer issues a 390
person a ticket, citation, or summons for a violation of section 391
4510.12 of the Revised Code because the offender was operating a 392
motor vehicle other than a commercial motor vehicle with a 393
driver's or commercial driver's license issued by this state that 394
was expired and the person's driver's or commercial driver's 395
license otherwise has not been suspended or canceled and therefore 396
but for the fact that the person's driver's or commercial driver's 397
license had expired the person's operation of the motor vehicle 398
would not have been in violation of section 4510.12 of the Revised 399
Code, the law enforcement officer shall issue to the person a 400
seven-day field driving permit at the time the officer issues the 401
ticket, citation, or summons. The law enforcement officer shall 402
issue the seven-day field driving permit to the person if the 403
person has not been arrested and is physically capable of 404
operating a motor vehicle at the time and in a safe manner and the 405
motor vehicle the person was operating at the time of the 406
violation of section 4510.12 of the Revised Code can be lawfully 407
operated on the public roads and is not a commercial motor 408
vehicle. The registrar of motor vehicles shall determine the 409
contents and form of the seven-day field driving permit, which 410
shall include spaces in which the law enforcement officer shall 411
enter the date and time of issuance of the permit and the date and 412
time that the permit expires. 413

(B) A person who is issued a seven-day field driving permit 414
under this section may operate a motor vehicle as follows if the 415
person has the permit in the person's possession: 416

(1) During the three hours immediately following the time of 417
issuance of the permit to enable the person to travel directly to 418
the person's residence; 419

(2) During the seven-day period commencing from the time and 420

date of issuance of the permit and prior to issuance by the 421
registrar or a deputy registrar of a driver's or commercial 422
driver's license to the person, the person may travel directly to 423
and from the person's residence and the person's place of 424
employment, but the person shall not operate a motor vehicle in 425
the course of the person's employment; 426

(3) During the seven-day period commencing from the time and 427
date of issuance of the permit, the person may travel to an office 428
of the registrar or a deputy registrar to obtain a driver's or 429
commercial driver's license. 430

(C) A person who is issued a seven-day field driving permit 431
under this section shall be deemed to possess a valid driver's 432
license issued by this state only if the person operates a motor 433
vehicle as specified in division (B) of this section. 434

(D) No state highway patrol trooper or other law enforcement 435
officer shall be personally liable or subject to any suit, 436
judgment, or claim or damages arising from any incident or set of 437
facts or circumstances that involve a person to whom the trooper 438
or officer issued a seven-day field driving permit under section 439
4510.121 of the Revised Code and that occurs subsequent to such 440
issuance. 441

(E) No person shall be issued more than one seven-day field 442
driving permit in any sixty-month period. 443

(F) No person who is issued a seven-day field driving permit 444
shall operate a motor vehicle other than as specified in division 445
(B) of this section. 446

(G) Whoever violates division (F) of this section is guilty 447
of a misdemeanor of the first degree. 448

Section 2. That existing sections 2743.02 and 2744.01 of the 449
Revised Code are hereby repealed. 450