

As Introduced

**129th General Assembly
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H. B. No. 434

Representative Newbold

Cosponsor: Representative Hall

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A B I L L

To amend sections 2744.02 and 2744.09 of the Revised 1
Code to require that a political subdivision other 2
than a county exhaust its own assets to satisfy 3
its contract or tort liability, before it may seek 4
contribution out of the assets of the county or 5
counties having territory within the political 6
subdivision. 7

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

Section 1. That sections 2744.02 and 2744.09 of the Revised 8
Code be amended to read as follows: 9

Sec. 2744.02. (A)(1) For the purposes of this chapter, the 10
functions of political subdivisions are hereby classified as 11
governmental functions and proprietary functions. Except as 12
provided in division (B) of this section, a political subdivision 13
is not liable in damages in a civil action for injury, death, or 14
loss to person or property allegedly caused by any act or omission 15
of the political subdivision or an employee of the political 16
subdivision in connection with a governmental or proprietary 17
function. 18

(2) The defenses and immunities conferred under this chapter 19

apply in connection with all governmental and proprietary 20
functions performed by a political subdivision and its employees, 21
whether performed on behalf of that political subdivision or on 22
behalf of another political subdivision. 23

(3) Subject to statutory limitations upon their monetary 24
jurisdiction, the courts of common pleas, the municipal courts, 25
and the county courts have jurisdiction to hear and determine 26
civil actions governed by or brought pursuant to this chapter. 27

(B) Subject to sections 2744.03 and 2744.05 of the Revised 28
Code, a political subdivision is liable in damages in a civil 29
action for injury, death, or loss to person or property allegedly 30
caused by an act or omission of the political subdivision or of 31
any of its employees in connection with a governmental or 32
proprietary function, as follows: 33

(1) Except as otherwise provided in this division, political 34
subdivisions are liable for injury, death, or loss to person or 35
property caused by the negligent operation of any motor vehicle by 36
their employees when the employees are engaged within the scope of 37
their employment and authority. The following are full defenses to 38
that liability: 39

(a) A member of a municipal corporation police department or 40
any other police agency was operating a motor vehicle while 41
responding to an emergency call and the operation of the vehicle 42
did not constitute willful or wanton misconduct; 43

(b) A member of a municipal corporation fire department or 44
any other firefighting agency was operating a motor vehicle while 45
engaged in duty at a fire, proceeding toward a place where a fire 46
is in progress or is believed to be in progress, or answering any 47
other emergency alarm and the operation of the vehicle did not 48
constitute willful or wanton misconduct; 49

(c) A member of an emergency medical service owned or 50

operated by a political subdivision was operating a motor vehicle 51
while responding to or completing a call for emergency medical 52
care or treatment, the member was holding a valid commercial 53
driver's license issued pursuant to Chapter 4506. or a driver's 54
license issued pursuant to Chapter 4507. of the Revised Code, the 55
operation of the vehicle did not constitute willful or wanton 56
misconduct, and the operation complies with the precautions of 57
section 4511.03 of the Revised Code. 58

(2) Except as otherwise provided in sections 3314.07 and 59
3746.24 of the Revised Code, political subdivisions are liable for 60
injury, death, or loss to person or property caused by the 61
negligent performance of acts by their employees with respect to 62
proprietary functions of the political subdivisions. 63

(3) Except as otherwise provided in section 3746.24 of the 64
Revised Code, political subdivisions are liable for injury, death, 65
or loss to person or property caused by their negligent failure to 66
keep public roads in repair and other negligent failure to remove 67
obstructions from public roads, except that it is a full defense 68
to that liability, when a bridge within a municipal corporation is 69
involved, that the municipal corporation does not have the 70
responsibility for maintaining or inspecting the bridge. 71

(4) Except as otherwise provided in section 3746.24 of the 72
Revised Code, political subdivisions are liable for injury, death, 73
or loss to person or property that is caused by the negligence of 74
their employees and that occurs within or on the grounds of, and 75
is due to physical defects within or on the grounds of, buildings 76
that are used in connection with the performance of a governmental 77
function, including, but not limited to, office buildings and 78
courthouses, but not including jails, places of juvenile 79
detention, workhouses, or any other detention facility, as defined 80
in section 2921.01 of the Revised Code. 81

(5) In addition to the circumstances described in divisions 82

(B)(1) to (4) of this section, a political subdivision is liable 83
for injury, death, or loss to person or property when civil 84
liability is expressly imposed upon the political subdivision by a 85
section of the Revised Code, including, but not limited to, 86
sections 2743.02 and 5591.37 of the Revised Code. Civil liability 87
shall not be construed to exist under another section of the 88
Revised Code merely because that section imposes a responsibility 89
or mandatory duty upon a political subdivision, because that 90
section provides for a criminal penalty, because of a general 91
authorization in that section that a political subdivision may sue 92
and be sued, or because that section uses the term "shall" in a 93
provision pertaining to a political subdivision. 94

(C) An order that denies a political subdivision or an 95
employee of a political subdivision the benefit of an alleged 96
immunity from liability as provided in this chapter or any other 97
provision of the law is a final order. 98

(D) If a political subdivision other than a county is found 99
liable in a civil action for damages arising out of a contract, or 100
for injury, death, or loss to person or property, the political 101
subdivision must first exhaust all conceivable means of paying the 102
claims against it, up to and including the sale, lease, or full 103
liquidation of its own assets, before the political subdivision 104
may seek contribution out of the assets of the county or counties 105
having territory within the political subdivision. 106

Sec. 2744.09. This chapter does not apply to, and shall not 107
be construed to apply to, the following: 108

(A) Civil actions that seek to recover damages from a 109
political subdivision or any of its employees for contractual 110
liability, except as provided in division (D) of section 2744.02 111
of the Revised Code; 112

(B) Civil actions by an employee, or the collective 113

bargaining representative of an employee, against ~~his~~ the 114
employee's political subdivision relative to any matter that 115
arises out of the employment relationship between the employee and 116
the political subdivision; 117

(C) Civil actions by an employee of a political subdivision 118
against the political subdivision relative to wages, hours, 119
conditions, or other terms of ~~his~~ employment; 120

(D) Civil actions by sureties, and the rights of sureties, 121
under fidelity or surety bonds; 122

(E) Civil claims based upon alleged violations of the 123
constitution or statutes of the United States, except that the 124
provisions of section 2744.07 of the Revised Code shall apply to 125
such claims or related civil actions. 126

Section 2. That existing sections 2744.02 and 2744.09 of the 127
Revised Code are hereby repealed. 128