

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**S. B. No. 357**

**Senators Tavares, Sawyer**

**Cosponsor: Senator Brown**

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**A B I L L**

To amend sections 2743.02 and 3333.31 and to enact 1  
section 3333.311 of the Revised Code to classify 2  
as residents of the state for higher education 3  
purposes individuals who are not citizens or 4  
permanent legal residents of the United States if 5  
they meet certain eligibility requirements. 6

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

**Section 1.** That sections 2743.02 and 3333.31 be amended and 7  
section 3333.311 of the Revised Code be enacted to read as 8  
follows: 9

**Sec. 2743.02.** (A)(1) The state hereby waives its immunity 10  
from liability, except as provided for the office of the state 11  
fire marshal in division (G)(1) of section 9.60 and division (B) 12  
of section 3737.221 of the Revised Code, for state institutions of 13  
higher education in division (G) of section 3333.311 of the 14  
Revised Code, and subject to division (H) of this section, and 15  
consents to be sued, and have its liability determined, in the 16  
court of claims created in this chapter in accordance with the 17  
same rules of law applicable to suits between private parties, 18  
except that the determination of liability is subject to the 19

limitations set forth in this chapter and, in the case of state 20  
universities or colleges, in section 3345.40 of the Revised Code, 21  
and except as provided in division (A)(2) or (3) of this section. 22  
To the extent that the state has previously consented to be sued, 23  
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

**Sec. 3333.31.** (A) For state subsidy and tuition surcharge 154  
purposes, status as a resident of Ohio shall be defined by the 155  
chancellor of the Ohio board of regents by rule promulgated 156  
pursuant to Chapter 119. of the Revised Code. No adjudication as 157  
to the status of any person under such rule, however, shall be 158  
required to be made pursuant to Chapter 119. of the Revised Code. 159  
The term "resident" for these purposes shall not be equated with 160  
the definition of that term as it is employed elsewhere under the 161  
laws of this state and other states, and shall not carry with it 162  
any of the legal connotations appurtenant thereto. Rather, except 163  
as provided in divisions (B) and (D) of this section, for such 164  
purposes, the rule promulgated under this section shall have the 165  
objective of excluding from treatment as residents those who are 166  
present in the state primarily for the purpose of attending a 167  
state-supported or state-assisted institution of higher education, 168  
and may prescribe presumptive rules, rebuttable or conclusive, as 169  
to such purpose based upon the source or sources of support of the 170  
student, residence prior to first enrollment, evidence of 171  
intention to remain in the state after completion of studies, or 172  
such other factors as the chancellor deems relevant. 173

(B) The rules of the chancellor for determining student 174  
residency shall grant residency status to a veteran and to the 175  
veteran's spouse and any dependent of the veteran, if both of the 176  
following conditions are met: 177

(1) The veteran either:	178
(a) Served one or more years on active military duty and was honorably discharged or received a medical discharge that was related to the military service;	179 180 181
(b) Was killed while serving on active military duty or has been declared to be missing in action or a prisoner of war.	182 183
(2) If the veteran seeks residency status for tuition surcharge purposes, the veteran has established domicile in this state as of the first day of a term of enrollment in an institution of higher education. If the spouse or a dependent of the veteran seeks residency status for tuition surcharge purposes, the veteran and the spouse or dependent seeking residency status have established domicile in this state as of the first day of a term of enrollment in an institution of higher education, except that if the veteran was killed while serving on active military duty or has been declared to be missing in action or a prisoner of war, only the spouse or dependent seeking residency status shall be required to have established domicile in accordance with this division.	184 185 186 187 188 189 190 191 192 193 194 195 196
(C) The rules of the chancellor for determining student residency shall not deny residency status to a student who is either a dependent child of a parent, or the spouse of a person who, as of the first day of a term of enrollment in an institution of higher education, has accepted full-time employment and established domicile in this state for reasons other than gaining the benefit of favorable tuition rates.	197 198 199 200 201 202 203
Documentation of full-time employment and domicile shall include both of the following documents:	204 205
(1) A sworn statement from the employer or the employer's representative on the letterhead of the employer or the employer's representative certifying that the parent or spouse of the student	206 207 208

is employed full-time in Ohio;	209
(2) A copy of the lease under which the parent or spouse is the lessee and occupant of rented residential property in the state, a copy of the closing statement on residential real property of which the parent or spouse is the owner and occupant in this state or, if the parent or spouse is not the lessee or owner of the residence in which the parent or spouse has established domicile, a letter from the owner of the residence certifying that the parent or spouse resides at that residence.	210 211 212 213 214 215 216 217
Residency officers may also evaluate, in accordance with the chancellor's rule, requests for immediate residency status from dependent students whose parents are not living and whose domicile follows that of a legal guardian who has accepted full-time employment and established domicile in the state for reasons other than gaining the benefit of favorable tuition rates.	218 219 220 221 222 223
(D) <del>(1)</del> The rules of the chancellor for determining student residency shall grant residency status to a person who, while a resident of this state for state subsidy and tuition surcharge purposes, graduated from a high school in this state or completed the final year of instruction at home as authorized under section 3321.04 of the Revised Code, if the person enrolls in an institution of higher education and establishes domicile in this state, regardless of the student's residence prior to that enrollment.	224 225 226 227 228 229 230 231 232
<del>(2) The rules of the chancellor for determining student residency shall not grant residency status to an alien if the alien is not also an immigrant or a nonimmigrant.</del>	233 234 235
(E) As used in this section:	236
<del>(1)</del> "Dependent," " <u>dependent</u> ," "domicile," "institution of higher education," and "residency officer" have the meanings ascribed in the chancellor's rules adopted under this section.	237 238 239



~~(2) "Alien" means a person who is not a United States citizen  
or a United States national.~~ 240  
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~~(3) "Immigrant" means an alien who has been granted the right  
by the United States bureau of citizenship and immigration  
services to reside permanently in the United States and to work  
without restrictions in the United States.~~ 242  
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~~(4) "Nonimmigrant" means an alien who has been granted the  
right by the United States bureau of citizenship and immigration  
services to reside temporarily in the United States.~~ 246  
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Sec. 3333.311. (A) As used in this section, "state  
institution of higher education" has the same meaning as section  
3345.011 of the Revised Code. 249  
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(B) For purposes of state subsidy and tuition and fee  
surcharges, an individual who is not a citizen or permanent legal  
resident of the United States and intends to attend a state  
institution of higher education has resident status if all of the  
following conditions are met: 252  
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(1) The individual graduated from a public or private high  
school, or received the equivalent of a high school diploma, in  
this state. 257  
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(2) The individual attended high school in this state for at  
least three years as of the date the individual graduated from  
high school, or the individual had resided in this state for at  
least three years as of the date the individual received the  
equivalent of a high school diploma. 260  
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(3) The individual registers as an entering student in the  
institution not earlier than the fall term of 2012. 265  
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(4) The individual provides the institution of higher  
education with an affidavit stating that the individual will file  
an application to become a citizen or permanent legal resident of 267  
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the United States at the earliest opportunity the individual is 270  
eligible to do so. 271

(C) An individual who is granted residency for tuition 272  
purposes under this section shall continue to be classified as a 273  
resident of this state until the individual establishes a 274  
residence outside of this state. 275

(D) Any individual described in division (B) of this section 276  
shall be eligible to receive a scholarship that is derived from 277  
funds not received from the state, for the purpose of 278  
scholarships, awarded by the state institution of higher education 279  
at which the individual is enrolled. 280

(E) Notwithstanding any provision of the Revised Code or any 281  
current appropriations act to the contrary, an individual 282  
described in division (B) of this section shall be eligible to 283  
receive any state-funded financial aid, including scholarships and 284  
grants, for which the individual otherwise is eligible. 285

(F) The board of trustees, or the equivalent, of each state 286  
institution of higher education shall establish procedures and 287  
forms that enable an individual described in division (B) of this 288  
section to apply for and receive all student aid programs 289  
administered by the institution to the full extent permitted by 290  
law. 291

(G) If a state court finds that this section is unlawful, the 292  
court may order that state institutions of higher education 293  
terminate compliance with this section, but no money damages, 294  
instructional and general fee refund or waiver, or other 295  
retroactive relief may be awarded to a claimant. In any action in 296  
which the court finds that this section is unlawful, the board of 297  
trustees, or equivalent, of a state institution of higher 298  
education shall be immune from the imposition of any award of 299  
money damages, instructional and general fee refund or waiver, or 300

other retroactive relief. 301

**Section 2.** That existing sections 2743.02 and 3333.31 of the 302

Revised Code are hereby repealed. 303