

As Introduced

**130th General Assembly
Regular Session
2013-2014**

S. B. No. 326

Senator Eklund

Cosponsor: Senator Coley

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A B I L L

To amend sections 2743.02 and 3345.40 of the Revised 1
Code relative to the set-off of collateral 2
recoveries against damages awarded in certain 3
civil actions against state universities or 4
colleges. 5

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

Section 1. That sections 2743.02 and 3345.40 of the Revised 6
Code be amended to read as follows: 7

Sec. 2743.02. (A)(1) The state hereby waives its immunity 8
from liability, except as provided for the office of the state 9
fire marshal in division (G)(1) of section 9.60 and division (B) 10
of section 3737.221 of the Revised Code and subject to division 11
(H) of this section, and consents to be sued, and have its 12
liability determined, in the court of claims created in this 13
chapter in accordance with the same rules of law applicable to 14
suits between private parties, except that the determination of 15
liability is subject to the limitations set forth in this chapter 16
and, in the case of state universities or colleges, in section 17
3345.40 of the Revised Code, and except as provided in division 18
(A)(2) or (3) of this section. To the extent that the state has 19

previously consented to be sued, this chapter has no applicability.

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

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

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

(b) The state immunity provided in division (A)(3)(a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this division is demonstrated if all of the following elements exist:

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

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

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

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

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

(C) Any hospital, as defined in section 2305.113 of the 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 the extent that 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 82
hospital electing to indemnify those persons, or to agree to so 83
indemnify, shall reserve any funds that are necessary, in the 84
exercise of sound and prudent actuarial judgment, to cover the 85
potential expense, fees, damage, loss, or other liability. The 86
superintendent of insurance may recommend, or, if the hospital 87
requests the superintendent to do so, the superintendent shall 88
recommend, a specific amount for any period that, in the 89
superintendent's opinion, represents such a judgment. This 90
authority is in addition to any authorization otherwise provided 91
or permitted by law. 92

(D) Recoveries against the state shall be reduced by the 93
aggregate of insurance proceeds, disability award, or other 94
collateral recovery received by the claimant. This division does 95
not apply to civil actions in the court of claims against a state 96
university or college under the circumstances described in section 97
3345.40 of the Revised Code. The collateral ~~benefits~~ recovery 98
provisions of division (B)(2) of that section apply under those 99
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 ten 103
thousand dollars or less, that is filed in the court of claims. 104

(F) A civil action against an officer or employee, as defined 105
in section 109.36 of the Revised Code, that alleges that the 106
officer's or employee's conduct was manifestly outside the scope 107
of the officer's or employee's employment or official 108
responsibilities, or that the officer or employee acted with 109
malicious purpose, in bad faith, or in a wanton or reckless manner 110
shall first be filed against the state in the court of claims that 111
has exclusive, original jurisdiction to determine, initially, 112
whether the officer or employee is entitled to personal immunity 113

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

The filing of a claim against an officer or employee under 120
this division tolls the running of the applicable statute of 121
limitations until the court of claims determines whether the 122
officer or employee is entitled to personal immunity under section 123
9.86 of the Revised Code. 124

(G) If a claim lies against an officer or employee who is a 125
member of the Ohio national guard, and the officer or employee 126
was, at the time of the act or omission complained of, subject to 127
the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 128
2671, et seq., the Federal Tort Claims Act is the exclusive remedy 129
of the claimant and the state has no liability under this section. 130

(H) If an inmate of a state correctional institution has a 131
claim against the state for the loss of or damage to property and 132
the amount claimed does not exceed three hundred dollars, before 133
commencing an action against the state in the court of claims, the 134
inmate shall file a claim for the loss or damage under the rules 135
adopted by the director of rehabilitation and correction pursuant 136
to this division. The inmate shall file the claim within the time 137
allowed for commencement of a civil action under section 2743.16 138
of the Revised Code. If the state admits or compromises the claim, 139
the director shall make payment from a fund designated by the 140
director for that purpose. If the state denies the claim or does 141
not compromise the claim at least sixty days prior to expiration 142
of the time allowed for commencement of a civil action based upon 143
the loss or damage under section 2743.16 of the Revised Code, the 144
inmate may commence an action in the court of claims under this 145

chapter to recover damages for the loss or damage. 146

The director of rehabilitation and correction shall adopt 147
rules pursuant to Chapter 119. of the Revised Code to implement 148
this division. 149

Sec. 3345.40. (A) As used in this section: 150

(1) "State university or college" has the same meaning as in 151
division (A)(1) of section 3345.12 of the Revised Code. 152

(2)(a) "The actual loss of the person who is awarded the 153
damages" includes all of the following: 154

(i) All wages, salaries, or other compensation lost by an 155
injured person as a result of the injury, including wages, 156
salaries, or other compensation lost as of the date of a judgment 157
and future expected lost earnings of the injured person; 158

(ii) All expenditures of an injured person or of another 159
person on behalf of an injured person for medical care or 160
treatment, for rehabilitation services, or for other care, 161
treatment, services, products, or accommodations that were 162
necessary because of the injury; 163

(iii) All expenditures to be incurred in the future, as 164
determined by the court, by an injured person or by another person 165
on behalf of an injured person for medical care or treatment, for 166
rehabilitation services, or for other care, treatment, services, 167
products, or accommodations that will be necessary because of the 168
injury; 169

(iv) All expenditures of a person whose property was injured 170
or destroyed, or of another person on behalf of such a person, in 171
order to repair or replace the property that was injured or 172
destroyed; 173

(v) All expenditures of an injured person, of a person whose 174
property was injured or destroyed, or of another person on behalf 175

of an injured person or a person whose property was injured or 176
destroyed, in relation to the actual preparation or presentation 177
of the claim of the person; 178

(vi) Any other expenditures of an injured person, of a person 179
whose property was injured or destroyed, or of another person on 180
behalf of an injured person or a person whose property was injured 181
or destroyed, that the court determines represent an actual loss 182
experienced because of the personal or property injury or property 183
loss. 184

(b) "The actual loss of the person who is awarded the 185
damages" does not include either of the following: 186

(i) Any fees paid or owed to an attorney for any services 187
rendered in relation to a ~~person~~ personal or property injury or 188
property loss; 189

(ii) Any damages awarded for pain and suffering, for the loss 190
of society, consortium, companionship, care, assistance, 191
attention, protection, advice, guidance, counsel, instruction, 192
training, or education of an injured person, for mental anguish, 193
or for any other intangible loss. 194

(B) Notwithstanding any other provision of the Revised Code 195
or rules of a court to the contrary, in an action against a state 196
university or college to recover damages for injury, death, or 197
loss to ~~persons~~ person or property caused by an act or omission of 198
the state university or college itself, by an act or omission of 199
any trustee, officer, or employee of the state university or 200
college while acting within the scope of ~~his~~ employment or 201
official responsibilities, or by an act or omission of any other 202
person authorized to act on behalf of the state university or 203
college that occurred while ~~he~~ the person was engaged in 204
activities at the request or direction, or for the benefit, of the 205
state university or college, the following rules shall apply: 206

(1) Punitive or exemplary damages shall not be awarded;	207
(2) If a plaintiff receives or is entitled to receive	208
benefits for injuries or loss allegedly incurred from a policy or	209
policies of insurance or any other source, the benefits shall be	210
disclosed to the court, and the amount of the benefits shall be	211
deducted from any award against the state university or college	212
recovered by the plaintiff. <u>Recoveries against a state university</u>	213
or college shall be reduced by the aggregate of insurance	214
proceeds, disability award, settlements, or any other collateral	215
recovery the plaintiff receives or is entitled to receive. No	216
insurer or other person is entitled to bring a civil action under	217
a subrogation provision in an insurance or other contract against	218
a state university or college with respect to such benefits <u>any of</u>	219
<u>those collateral recoveries.</u>	220
Nothing in this division affects or shall be construed to	221
limit the rights of a beneficiary under a life insurance policy or	222
the rights of sureties under fidelity or surety bonds.	223
(3) There shall not be any limitation on compensatory damages	224
that represent the actual loss of the person who is awarded the	225
damages. However, except in wrongful death actions brought	226
pursuant to Chapter 2125. of the Revised Code, damages that arise	227
from the same cause of action, transaction or occurrence, or	228
series of transactions or occurrences and that do not represent	229
the actual loss of the person who is awarded the damages shall not	230
exceed two hundred fifty thousand dollars in favor of any one	231
person. The limitation on damages that do not represent the actual	232
loss of the person who is awarded the damages provided in this	233
division does not apply to court costs that are awarded to a	234
plaintiff, or to interest on a judgment rendered in favor of a	235
plaintiff, in an action against a state university or college.	236
Section 2. That existing sections 2743.02 and 3345.40 of the	237

Revised Code are hereby repealed. 238

Section 3. This act's amendment of section 3345.40 of the 239
Revised Code to provide that settlements received by a plaintiff 240
are collateral recoveries that are reduced from any recoveries of 241
a plaintiff in a civil action against a state university or 242
college for damages for injury, death, or loss to person or 243
property abrogates the decision of the Court of Appeals of the 244
Tenth District in *Adae v. Ohio*, 2013-Ohio-23, 2013 WL 85200, that 245
settlement proceeds are not subject to collateral set-off against 246
recoveries by a plaintiff against a state university or college. 247