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Bill Analysis
Legislative Service Commission

H.B. 295

123rd General Assembly
(As Reported by H. Civil & Commercial Law)

Reps. Terwilleger, Taylor, Schuler, Jolivette, O'Brien, Goodman, Tiberi, Mead, Householder, DePiero, Bender, Allen, Boyd, Sullivan, Roman

BILL SUMMARY

- Grants the state and political subdivisions immunity from tort liability for injury, death, or loss to person or property resulting from the inability or failure of a computer system to accurately or correctly sequence or compute days or dates or values dependent on those days or dates or from any of specified actions or omissions regarding a computer system's date functionality.

CONTENT AND OPERATION

State immunity from liability

Background

Under Section 16 of Article I, Ohio Constitution, "[s]uits may be brought against the state, in such courts and in such manner, as may be provided by law." In conjunction with the creation of the Court of Claims (effective January 1, 1975), the General Assembly waived the former common law doctrine of state government sovereign immunity and consented to be sued and have its liability determined in the Court of Claims generally in accordance with the *same rules of law applicable to suits between private parties*. Most claims covered by this waiver of sovereign immunity are tort claims against the state, that is, claims for an award of compensatory damages for injury, death, or loss to person or property proximately caused by negligent acts or omissions of state officers or employees engaged within the scope of their official responsibilities or employment. However, other types of civil actions that are not based on tortious conduct (for example, civil actions based on certain contract claims with respect to which the state had not consented to be sued prior to January 1, 1975) may be commenced against the state in the Court of Claims pursuant to the waiver of sovereign immunity in the Court of Claims Law, R.C. Chapter 2743. (See **COMMENT 1**.)

Existing law

Under the Court of Claims Law, the state waives its immunity from liability and consents to be sued, and have its liability determined, in the Court of Claims in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in that Law and, in the case of state universities or colleges, the law pertaining to the tort liability of state universities or colleges, and except as described in the next paragraph. The filing of a civil action in the Court of Claims, except a civil action filed *by* the state, results in a complete *waiver* of any cause of action, based on the same act or omission, that the filing party has against an officer or employee. The waiver, however, is *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. (Sec. 2743.02(A)(1).)

If a claimant proves in the Court of Claims that an officer or employee would have personal liability for acts or omissions but for the fact that the officer or employee has personal immunity under the State Officer or Employee Personal Immunity Law (see **COMMENT 2**), the state must be held liable in the Court of Claims in any action that is timely filed and that is based upon those acts or omissions (sec. 2743.02(A)(2)).

Operation of the bill

The bill adds an exception to the general waiver of its immunity from liability under the Court of Claims Law. It specifies that the state is *immune from liability* in a civil action if the injury, death, or loss to person or property that is the subject of the civil action resulted from any of the following (sec. 2743.02(A)(3)(a), (b), (c), and (d)) (see **COMMENT 3** and 4):

(1) The inability or failure of any system to accurately or correctly sequence or compute days or dates or values dependent on those days or dates;

(2) Any efforts to attain or any failure to attain date functionality;

(3) Any supervision, instructions, recommendations, warnings, or advice that was given or should have been given regarding date functionality or given as a result of testing for, identifying, or communicating information about date functionality;

(4) Any disclosure, nondisclosure, representation, or omission regarding date functionality.

Liability of state university or college

Under existing law, notwithstanding any other provision of the Revised Code or rules of a court to the contrary, in an action against a state university or college to recover damages for injury, death, or loss to person or property caused by an act or omission of the state university or college itself, by an act or omission of any trustee, officer, or employee of the state university or college while acting within the scope of employment or official responsibilities, or by an act or omission of any other person authorized to act on behalf of the state university or college that occurred while the person was engaged in activities at the request or direction, or for the benefit, of the state university or college, certain rules apply regarding the extent of recoverable damages (sec. 3345.40(B)). (See **COMMENT 5**.)

The bill specifies that this provision in existing law is subject to the bill's provisions granting immunity to the state from liability if the injury, death, or loss to person or property that is the subject of the civil action resulted from any of the circumstances or any of the actions or omissions as described above in "*State immunity from liability*" (sec. 3345.40(B)).

Political subdivision immunity from liability

Existing law

The Political Subdivision Sovereign Immunity (PSSI) Law focuses upon the circumstances under which a political subdivision has or does not have potential tort liability in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function (sec. 2744.02, not in the bill). (See **COMMENT 6**.)

Under the PSSI Law, in a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, certain defenses or *immunities* may be asserted to establish *nonliability* (sec. 2744.03(A)). (See **COMMENT 7**.)

Operation of the bill

The bill enacts an additional immunity in addition to the existing statutory immunities that a political subdivision may assert to establish nonliability in a civil action brought against the political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function. It specifies that the

political subdivision is *immune from liability* if the injury, death, or loss to person or property resulted from any of the following (sec. 2744.03(A)(8)(a), (b), (c), and (d)) (see **COMMENT 3** and **8**):

(1) The inability or failure of any system to accurately or correctly sequence or compute days or dates or values dependent on those days or dates;

(2) Any efforts to attain or any failure to attain date functionality;

(3) Any supervision, instructions, recommendations, warnings, or advice that was given or should have been given regarding date functionality or given as a result of testing for, identifying, or communicating information about date functionality;

(4) Any disclosure, nondisclosure, representation, or omission regarding date functionality.

COMMENT

1. For purposes of the Court of Claims Law, "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, institutions, and other instrumentalities of the state. "State" does not include political subdivisions, defined in the Court of Claims Law as municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state to which the sovereign immunity of the state attaches. (Sec. 2743.01(A) and (B).)

2. Under the State Officer or Employee Personal Immunity Law, R.C. 9.86- not in the bill, *generally*, a state officer or employee is *not liable in any civil action* arising under Ohio law for damage or injury caused in the performance of the officer's or employee's duties. A state officer or employee, however, *is liable* in a civil action of that nature if the officer's or employee's actions were manifestly outside the scope of the officer's or employee's employment or official responsibilities or the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. The personal immunity of a state officer or employee *does not apply* in civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff. This general personal immunity does not eliminate, limit, or reduce any immunity from civil liability that is conferred upon an officer or employee by any other statute or by case law and *does not affect the liability of the state* in an action filed against the state in the Court of Claims.

3. For purposes of the bill's provisions, the bill enacts the following definitions of terms both in the Court of Claims Law and the Political Subdivision Sovereign Immunity Law:

(a) "System" means any computer or computer-related hardware, software, or data and includes, but is not limited to, processors, chips, circuitry, operating and other electronic systems, networks, programs, codes, files, and electronically stored information (secs. 2743.01(E) and 2744.01(K)).

(b) "Date functionality" means the ability of any system to accurately and correctly recognize, sequence, or compute days or dates or values dependent on days or dates (secs. 2743.01(E) and 2744.01(A)).

4. It appears that the bill's grant of immunity from tort liability to the state would not affect a state officer's or employee's tort liability resulting from actions that were manifestly outside the scope of the officer's or employee's employment or official responsibilities or if the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. (See **COMMENT 2**.)

5. The rules that apply under R.C. 3345.40(B) are the following:

(a) Punitive or exemplary damages cannot be awarded.

(b) If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits must be disclosed to the court, and the amount of the benefits must be deducted from any award against the state university or college recovered by the plaintiff.

(c) There cannot be any limitation on compensatory damages that represent the actual loss of the person who is awarded the damages. However, except in wrongful death actions, damages that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences and that do *not* represent the actual loss of the person who is awarded the damages cannot exceed \$250,000 in favor of any one person.

6. For purposes of the PSSI Law, "political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission, regional planning commission, county planning commission, joint planning council, interstate regional planning commission, port authority, regional council established by political subdivisions, emergency planning district and joint emergency planning district, joint emergency medical

services district, fire and ambulance district, joint interstate emergency planning district, county solid waste management district and joint solid waste management district, and a community school. (Sec. 2744.01(G).)

7. The statutory defenses or immunities under R.C. 2744.03(A)(1) to (7) are:

(a) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

(b) The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.

(c) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

(d) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to the Probation Law or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of the Workers' Compensation Law in connection with the community service or community work for or in the political subdivision.

(e) The political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(f) In certain circumstances, the employee is immune from liability unless one of the following applies: (i) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities, (ii) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner, or (iii) liability is expressly imposed upon the employee by a section of the Revised Code. Liability is not to be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.

(g) The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

8. It appears that the bill's grant of immunity from tort liability to political subdivisions would not affect a political subdivision employee's tort liability resulting from acts or omissions that were manifestly outside the scope of the employee's employment or official responsibilities or were with malicious purpose, in bad faith, or in a wanton or reckless manner or if liability is expressly imposed upon the employee by a section of the Revised Code. (See **COMMENT 7** at paragraph (f).)

HISTORY

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