



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 73

125th General Assembly
(As Introduced)

Reps. Carano, Hartnett, Hoops, Young, Cirelli, Hollister, J. Stewart, McGregor, Boccieri, Grendell, Callender, Ujvagi, Allen, Seitz, Sferra, Kearns, Perry

BILL SUMMARY

- Establishes the following full defense to the existing liability of a political subdivision for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by an employee of the political subdivision upon the public roads, highways, or streets when the employee is engaged within the scope of the employee's employment and authority: that an employee of a public school, or a parent, guardian, custodian, or other person in charge of a child who is a student of the public school, for the purpose of transporting students to and from a school-related event, was operating a privately owned motor vehicle that is not a school bus and that is not leased or contracted by the public school, and the operation of that vehicle did not constitute willful or wanton misconduct.
- Provides that the rules adopted by the Department of Education relating to the operation of vehicles used for pupil transportation must not prohibit, restrict, or otherwise regulate pupil transportation to and from school-related events by an employee or volunteer of a school, or by a parent, guardian, custodian, or person in charge of a child who is a pupil enrolled in the school, by means of a privately owned motor vehicle that is not a school bus and that is not leased or contracted by the school for the purpose of providing that transportation.

CONTENT AND OPERATION

Background law--general nonliability/liability of political subdivisions

For the purposes of R.C. Chapter 2744., the Political Subdivision Sovereign Immunity (PSSI) Law, the functions of political subdivisions are classified as

governmental functions and *proprietary functions* (see **COMMENT 1**). Generally, except as specifically provided in statute, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function. However, subject to specific statutory defenses and immunities and to specified limitations on the damages that may be awarded, a political subdivision is liable in damages in a civil action in the following circumstances (R.C. 2744.02(A) and (B) and 2744.05--not in the bill) (see **COMMENT 2**):

(1) Generally and subject to specified *defenses* related to police, fire department, and emergency medical service emergency responses (see below), if the injury, death, or loss to person or property is caused by the negligent operation of any motor vehicle by an employee of the political subdivision when the employee is engaged within the scope of the employee's employment and authority;

(2) Generally, if the injury, death, or loss to person or property is caused by the negligent performance of acts by an employee of the political subdivision with respect to proprietary functions of the political subdivision;

(3) Generally and subject to a specified defense, if the injury, death, or loss to person or property is caused by the political subdivision's negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads;

(4) Generally, if the injury, death, or loss to person or property is caused by the negligence of a political subdivision employee and occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, other than adult or juvenile detention facilities;

(5) If civil liability is expressly imposed upon the political subdivision by a section of the Revised Code. Civil liability is not construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

Negligent operation of motor vehicle by political subdivision employee

Existing law

Under the PSSI Law, generally and subject to three specific statutory defenses, if the injury, death, or loss to person or property is caused by the negligent operation of any motor vehicle by an employee of the political subdivision when the employee is engaged within the scope of the employee's employment and authority, the political subdivision is liable for the injury, death, or loss to person or property. Those three specific statutory defenses are as follows (R.C. 2744.02(B)(1)):

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

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

(3) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license or driver's license issued pursuant to Ohio law, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with the precautions specified by law upon approaching a red or stop signal or any stop sign.

Operation of the bill

The bill adds another full defense to the liability of a political subdivision for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by an employee of the political subdivision upon the public roads, highways, or streets when the employee is engaged within the scope of the employee's employment and authority. This defense is that an employee of a public school, or a parent, guardian, custodian, or other person in charge of a child who is a student of the public school, for the purpose of transporting students to and from a school-related event, was operating a privately owned motor vehicle that is not a school bus and that is not leased or contracted by the public school, and the operation of that vehicle did not constitute willful or wanton misconduct. For purposes of this provision, "public school" means a school under the control of

the board of education of a school district or community school established under the Community Schools Law. (R.C. 2744.02(B)(1)(d).)

School transportation regulations

Existing law

The traffic laws dealing with the operation of motor vehicles require the Department of Public Safety, by and with the advice of the Superintendent of Public Instruction, to adopt and enforce rules relating to the construction, design, and equipment, including lighting equipment, of all school buses both publicly and privately owned and operated in Ohio. The Department of Education, by and with the advice of the Director of Public Safety, must adopt and enforce rules relating to the operation of all *vehicles used for pupil transportation* (any vehicle that is identified as such by the Department of Education by rule and is subject to the Department of Education's Pupil Transportation Operation and Safety Rules). Existing law prohibits any person from doing either of the following: (1) operating a vehicle used for pupil transportation within Ohio in violation of the rules of the Department of Education or the Department of Public Safety or (2) as the owner of or having the supervisory responsibility for a vehicle used for pupil transportation, permitting the operation of the vehicle within Ohio in violation of the rules of either Department. (R.C. 4511.76(A), (B), (C), and (E).)

Operation of the bill

The bill provides that the rules adopted by the Department of Education as described above must not prohibit, restrict, or otherwise regulate pupil transportation to and from school-related events by an employee or volunteer of a school, or by a parent, guardian, custodian, or person in charge of a child who is a pupil enrolled in the school, by means of a privately owned motor vehicle that is not a school bus and that is not leased or contracted by the school for the purpose of providing that transportation (R.C. 4511.76(B)).

COMMENT

1. For purposes of the PSSI Law, "governmental function" means a function of a political subdivision that is specified as such in that Law (see R.C. 2744.01(C)(2)) or that is any of the following (R.C. 2744.01(C)(1)--not in the bill):

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

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

(3) 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 the PSSI Law as a proprietary function.

For purposes of the PSSI Law, "proprietary function" means a function of a political subdivision that is specified as such in that Law (see R.C. 2744.01(G)(2)) or that satisfies *both* of the following (R.C. 2744.01(G)(1)--not in the bill):

(1) The function is not one 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, is not one that is for the common good of all citizens of the state, and is not one specified as a "governmental function" in the PSSI Law.

(2) 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.

2. R.C. 2744.02 in the bill needs to be updated to reflect the amendments made to that section by Am. Sub. S.B. 106 of the 124th General Assembly, enacted effective April 9, 2003. This Analysis discusses the current version of that section and not the version that is in the bill.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-20-03	p. 162

h0073-i-125.doc/kl

