



Sub. H.B. 265*

125th General Assembly
(As Reported by H. Juvenile and Family Law)

Reps. Faber, McGregor, Seitz, Gibbs, Schaffer, Seaver, Wagner, Webster

BILL SUMMARY

- Provides immunity from civil liability to school districts, community schools, nonpublic schools, and school employees for injury, death, or loss allegedly resulting from disciplining a student.
- Provides that the immunity does not apply if the discipline results in child endangerment.

CONTENT AND OPERATION

Immunity from civil liability

(R.C. 2744.03)

Current law generally provides political subdivisions, and employees of political subdivisions, with qualified immunity in civil suits seeking damages for injury, death, or loss resulting from an act or omission in connection with a governmental or proprietary function in circumstances specified in statute.¹

* *This analysis was prepared before the report of the House Juvenile and Family Law Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

¹ *With limited exceptions, "employee" includes any officer, agent, employee, or servant who is authorized to act and is acting within the scope of employment for a political subdivision.*

"Political subdivision" means a body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state and includes municipal corporations, townships, counties, school districts, and community schools.

Immunity of political subdivisions

A political subdivision is granted immunity in a number of circumstances, including those in which the conduct that gave rise to the liability:

(1) Was part of an employee's performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function;

(2) Was not negligent and was required or authorized by law, or necessary to the employee's or political subdivision's exercise of powers;

(3) Was within the employee's discretion regarding policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the employee's office or position.

In addition to the immunities described above, in a civil suit for damages a political subdivision may assert any other defense or immunity available at common law or established by the Revised Code.

"Governmental function" means a function of a political subdivision that either (1) is imposed on the state as an obligation of sovereignty and performed by a political subdivision voluntarily or pursuant to legislative requirement, (2) is for the common good of all citizens of the state, or (3) promotes or preserves the public peace, health, safety, or welfare; involves activities that are not customarily engaged in by nongovernmental persons; and is not specifically classified as a proprietary function in the Revised Code. "Governmental function" includes the provision of police, fire, emergency medical, ambulance, and rescue services or protection; the power to preserve the peace; the provision of public education; the provision of a free public library system; the regulation and use of roads and public grounds; as well as judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions.

"Proprietary function" means a function of a political subdivision that (1) is not specifically listed in the Revised Code as a governmental function, (2) is not imposed on the state as an obligation of sovereignty, (3) is not a function that is for the common good of all citizens of the state, and (4) promotes or preserves the public peace, health, safety, or welfare and involves activities that are not customarily engaged in by nongovernmental persons. "Proprietary function" includes the operation of a hospital; maintenance of a sewer system; and operation of a public stadium, auditorium, orchestra, or off-street parking facility.

(R.C. 2744.01, not in the bill).



Immunity for employees of political subdivisions

Current law. Except in situations specified in statute, immunity is not extended to a political subdivision employee if any of the following is the case:

(1) The employee's conduct was manifestly outside the scope of employment or official responsibilities;

(2) The employee's conduct was malicious, in bad faith, wanton, or reckless; or

(3) Liability is specifically imposed on the employee by a section of the Revised Code.

The bill. The bill expands the exceptions to include situations governed by the bill's provision regarding immunity in suits arising out of the discipline of a student.

Discipline of a student

(R.C. 3313.473)

The bill provides that a city, exempted village, local or joint vocational school district or educational service center, community school, or nonpublic school, or an employee of such an entity, is immune from damages in a civil suit seeking recovery for injury, death, or loss allegedly sustained as a result of an employee's discipline of a student. For purposes of this provision, the bill defines "employee" as any person, whether or not compensated and whether full-time or part-time, who is authorized to act and is acting within the scope of employment for a city, exempted village, local or joint vocational school district or educational service center, community school, or nonpublic school.

Under the bill, the immunity does not apply if the discipline used by the employee results in child endangerment. For purposes of this provision, the bill defines "child endangerment" as (1) the abuse of a child, (2) the administration of a disciplinary measure, or physical restraint of a child in a cruel manner or for a prolonged period, that is excessive under the circumstances and creates a substantial risk of serious physical harm to the child, or (3) the repeated administration of unwarranted disciplinary measures to a child, where there is a substantial risk that such measures will seriously impair or retard the child's mental health or development.

The bill provides that the new provision regarding immunity for the discipline of a student does not eliminate, limit, or reduce any other immunity or defense to which a school district or school district employee may otherwise be

entitled. The bill further provides that the new immunity provision does not affect the Revised Code section requiring school boards that wish to utilize corporal punishment to adopt a resolution permitting the use of corporal punishment for disciplinary purposes.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-21-03	p. 1037
Reported, H. Juvenile & Family Law	---	---

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