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Bill Analysis

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SUMMARY

- Provides that, generally, any peace officer who, under color of law, and by the officer's act or omission while performing official responsibilities, subjects or causes to be subjected any other individual to the deprivation of that individual's individual rights is liable to that individual in an action for damages or for injunctive or other relief.
- Provides that, generally, any peace officer who fails to intervene in another peace officer's act or omission as described in the preceding dot point is liable in an action for damages or for injunctive or other relief.
- Specifies that notwithstanding any provision of law to the contrary, "qualified immunity" or any immunity or defense provided by any Revised Code section does not apply as an immunity from, or a defense to, any action described in the two preceding dot points.
- Defines "qualified immunity" as a defense to, or an immunity from, a civil action described above against any peace officer based on the officer's act, omission, or failure to intervene as described in the first two dot points, if that act, omission, or failure does not violate a clearly established individual right or clearly established law that implements that right.
- Specifies the award to the plaintiff, or to the defendant, in whose favor the judgment in the action is rendered by the court.
- Generally requires the political subdivision that employs a peace officer to indemnify and hold harmless the officer in the amount of any judgment or settlement, other than for punitive or exemplary damages, that is obtained against the officer in the action.
- Provides that the officer who did not act upon a good faith and reasonable belief that the officer's act or omission was lawful or the officer's failure to intervene in another officer's act or omission was lawful is personally liable for the judgment and limits the indemnification by the employer political subdivision.

- Prevents the political subdivision from indemnifying the peace officer if the officer was convicted of or pleaded guilty to a criminal offense for the officer's act or omission, or for the officer's failure to intervene in another peace officer's act or omission, that gave rise to the claim in the action.
- Requires the peace officer's employer or employer's liability insurance to satisfy the amount of the uncollectible judgment or settlement.
- Specifies a period of limitations for bringing the civil action of two years after the cause of action accrues.

DETAILED ANALYSIS

Liability of political subdivision peace officer

Under the bill, generally, any "peace officer" who, under color of law, and by the officer's act or omission in the course of the performance of the officer's official responsibilities, subjects or causes to be subjected any other individual to the deprivation of that individual's "individual rights" is liable to that individual in an action for damages for injury, death, or loss to person or for injunctive relief or any other appropriate relief. Generally, any "peace officer" who fails to intervene in another peace officer's act or omission as described above is liable in an action for damages for injury, death, or loss to person or for injunctive relief or any other appropriate relief.¹ (See "**Definitions.**")

Qualified immunity and Political Subdivision Sovereign Immunity Law not applicable

The bill provides that notwithstanding any provision of law to the contrary, "qualified immunity" or any immunity or defense provided by any section of the Revised Code does not apply as an immunity from, or a defense to, any action described above. The Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744) (PSSI Law) does not apply to any such action.²

The PSSI Law expands the exceptions to its application to include civil actions brought under the bill against a peace officer who is employed by a political subdivision.³

Definitions

The bill defines the following terms:

¹ R.C. 2307.48(B)(1).

² R.C. 2307.48(B)(2) and (3).

³ R.C. 2744.09(F).

“Individual rights” means all rights of an individual that are secured by Article I of the Ohio Constitution, and that create binding obligations on government actors to protect those rights.⁴

“Peace officer” generally includes any of the following peace officers under the Arrest Law who is employed full-time or part-time by a political subdivision: a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to R.C. 737.04, member of a police force employed by a metropolitan housing authority, member of a police force employed by a regional transit authority, special police officer employed by a port authority, police constable of any township, police officer of a township or joint police district, or a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations.⁵

“Political 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, board of hospital commissioners or board of hospital trustees appointed for a municipal hospital, regional planning commission, county planning commission, joint planning council, interstate regional planning commission, port authority, regional council, 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, community school, county land reutilization corporation, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program, a community-based correctional facility and program or district community-based correctional facility and program, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program.⁶

“Qualified immunity” means a defense to, or an immunity from, a civil action for damages for injury, death, or loss to person, injunctive relief, or other appropriate relief against any peace officer based on the officer’s act or omission, or failure to intervene in another peace officer’s act or omission as described above in **“Liability of political subdivision peace officer”**, if that act or omission or failure to intervene does not violate a clearly established individual right or clearly established law that implements the individual right of which a reasonable person would have known.⁷

⁴ R.C. 2307.48(A)(1).

⁵ R.C. 2307.48(A)(2), by reference to R.C. 2935.01 (Arrest Law), not in the bill. Note that the peace officers listed are those employed by a political subdivision.

⁶ R.C. 2307.48(A)(3), by reference to R.C. 2744.01, not in the bill.

⁷ R.C. 2307.48(A)(4).

Court judgment in action

The bill provides that if the court enters judgment in favor of the plaintiff who brings an action described above in “**Liability of political subdivision peace officer**,” it must award to the plaintiff any recoverable compensatory and punitive or exemplary damages if the action is for damages and any reasonable attorney’s fees and court costs incurred by the plaintiff in any action for damages, injunctive relief, or other appropriate relief.⁸

If the court enters judgment in favor of the defendant peace officer in such an action, the court must award to the defendant any reasonable attorney’s fees and court costs incurred by the defendant only if the court determines in the judgment that the filing of that action constituted frivolous conduct as defined in the law on frivolous conduct in filing civil claims.⁹

Indemnification of peace officer

Under the bill, notwithstanding any other provision of law, generally, the political subdivision that employs a peace officer must indemnify and hold harmless the peace officer in the amount of any judgment or settlement, other than a judgment for punitive or exemplary damages, that is obtained against the officer in an action brought under the bill.¹⁰ However, if the political subdivision determines that the officer did not act upon a good faith and reasonable belief that the officer’s act or omission was lawful or the officer’s failure to intervene in another peace officer’s act or omission was lawful, the peace officer is personally liable pursuant to any judgment or settlement entered against the officer. The political subdivision that employs that peace officer must not indemnify the officer for 5% of the amount of the judgment or settlement or \$25,000, whichever is less.¹¹

Exception to indemnification

The bill prevents the political subdivision from indemnifying the peace officer if the officer was convicted of or pleaded guilty to a criminal offense for the officer’s act or omission, or for the officer’s failure to intervene in another peace officer’s act or omission, that gave rise to the claim in an action brought under the bill.¹²

Uncollectible judgment

The bill specifies that notwithstanding any provision of the bill to the contrary, if the judgment or settlement or any portion of the judgment or settlement entered against the

⁸ R.C. 2307.48(C)(1).

⁹ R.C. 2307.48(C)(2) and by reference to R.C. 2323.51, not in the bill.

¹⁰ R.C. 2307.48(D)(1).

¹¹ R.C. 2307.48(D)(2).

¹² R.C. 2307.48(F).

peace officer is uncollectible from the officer, the peace officer's employer or employer's liability insurance must satisfy the amount of the uncollectible judgment or settlement.¹³

Period of limitations

A civil action under the bill must be commenced within two years after the cause of action accrues.¹⁴

HISTORY

Action	Date
Introduced	06-01-21

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¹³ R.C. 2307.48(E).

¹⁴ R.C. 2307.48(G).