

Senate Fiscal Agency  
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**SFA****BILL ANALYSIS**

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House Bill 5063 (Substitute S-1 as reported)  
House Bill 5803 (as reported without amendment)  
Sponsor: Representative Larry Julian  
House Committee: Family and Civil Law  
Senate Committee: Health Policy

Date Completed: 10-3-00

### **RATIONALE**

Under the governmental immunity law, a governmental agency generally is protected from tort liability if the agency is engaged in the exercise or discharge of a governmental function. In addition, as a rule, each employee of a governmental agency is immune from tort liability for personal injury or property damage caused by the employee while in the course of employment or service, if specific conditions are met. The law makes a number of exceptions to these provisions, including what is referred to as the "hospital exception". The law states that it does not grant immunity to a governmental agency with respect to the ownership or operation of a hospital or to its agents or employees (although a facility owned or operated by the Department of Corrections or Community Health remains immune from liability). This particular exception applies to both the University of Michigan (U of M) and Wayne State University (WSU), because they operate hospitals as an adjunct to their medical school. On the other hand, although Michigan State University (MSU) has colleges of osteopathic and human medicine, it lacks its own hospital; instead, MSU operates its residency program through privately owned hospitals.

In a 1998 decision, the Michigan Supreme Court confirmed that the hospital exception applies to U of M and WSU, but not to MSU, and upheld the constitutionality of the exception (*Vargo v Sauer*, 457 Mich 49). Many people believe that this is an unfair situation, because it means that medical malpractice suits may be brought against U of M and WSU and their employees, but not against MSU or its employees.

Another concern involves the confidentiality of peer review records. Under the Public Health Code, records that are collected by or for a professional review purpose in a health facility or agency are not subject to public disclosure or subpoena. Since U of M and WSU own a hospital, the confidentiality provision for health facilities applies to them. It has been suggested that the provision also should

include MSU.

### **CONTENT**

**House Bill 5063 (S-1) would amend the governmental immunity law to revise the hospital exception to immunity, by providing for immunity only in regard to a hospital owned by the Department of Community Health (DCH) or the Department of Corrections (DOC). House Bill 5803 would amend the Public Health Code to provide for the confidentiality of professional review data and records of an institution of higher education with colleges of osteopathic and human medicine. The bills are tie-barred to each other.**

#### **House Bill 5063 (S-1)**

The governmental immunity law states that it does not grant immunity to a governmental agency with respect to the ownership or operation of a hospital or county medical care facility or to its agents or employees. "Hospital" means a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician; the term does not include a hospital owned or operated by the DCH or the DOC. The bill would delete this provision and the definition of "hospital".

The bill provides, instead, that the law would not grant immunity to a governmental agency or an employee or agent of a governmental agency with respect to the provision of medical care or treatment to a patient, except medical care or treatment provided to a patient in a hospital owned or operated by the DCH or the DOC.

The bill states that it would apply only to a cause of action arising on or after the bill's effective date.

### **House Bill 5803**

The Public Health Code provides that the records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency are confidential, are not public records or subject to court subpoena, and may be used only for the purposes provided in Article 17 of the Code (which governs health facilities and agencies). The bill would extend this provision to the records, data, and knowledge collected for or by individuals or committees assigned a professional review function in an institution of higher education in this State that has colleges of osteopathic and human medicine.

MCL 691.1407 (H.B. 5063)  
333.20175 (H.B. 5803)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Although the Michigan Supreme Court held that the governmental immunity exception for hospitals is constitutional, the Court also stated, "...there is some resonance to plaintiff's perceptions regarding the 'unfairness' of the hospital exception...". Many people would go much farther and say that the exception is blatantly unfair in the way it treats patients of different universities. As the plaintiff in the court case maintained, "...the hospital exception, when viewed in the context of MSU's unique arrangement with local private hospitals, creates a situation in which similarly situated patients are subjected to disparate rights of recovery." In other words, people may bring a medical malpractice lawsuit against U of M or Wayne, but not against MSU.

The current version of the hospital exception was enacted in 1986 as part of a large tort reform package. While both the Michigan Supreme Court and the Court of Appeals found a rational basis for the hospital exception, the Courts' reasoning differed. The Supreme Court also used the language, "...the Legislature *may have decided...*" (emphasis added). Thus, the actual reason for the exception is not entirely clear. Moreover, many people believe that the different treatment of MSU was an inadvertent consequence of the hospital exception, and that the exception created an unintended loophole for Michigan State University. By rewriting the exception, House Bill 5063 (S-1) would treat U of M, WSU, and MSU alike, and establish equal rights of recovery for their patients.

### **Supporting Argument**

House Bill 5803 would provide the same peer review confidentiality protections to professional review activities at Michigan State University that are already available under the Public Health Code for peer review functions in a health facility or agency, including a university-owned hospital.

Legislative Analyst: S. Lowe

### **FISCAL IMPACT**

#### **House Bill 5063 (S-1)**

The bill would have an indeterminate fiscal impact on future liability costs for Michigan State University.

#### **House Bill 5803**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman  
J. Walker

#### **H9900\5063a**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.