

**SUBSTITUTE FOR  
SENATE BILL NO. 1191**

A bill to amend 1964 PA 170, entitled

"An act to make uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, officers, employees, and volunteers thereof, and members of certain boards, councils, and task forces when engaged in the exercise or discharge of a governmental function, for injuries to property and persons; to define and limit this liability; to define and limit the liability of the state when engaged in a proprietary function; to authorize the purchase of liability insurance to protect against loss arising out of this liability; to provide for defending certain claims made against public officers, employees, and volunteers and for paying damages sought or awarded against them; to provide for the legal defense of public officers, employees, and volunteers; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal acts and parts of acts,"

by amending section 7 (MCL 691.1407), as amended by 2013 PA 173,

and by adding section 7d.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 7. (1) Except as otherwise provided in this act, a  
2 governmental agency is immune from tort liability if the  
3 governmental agency is engaged in the exercise or discharge of a  
4 governmental function. Except as otherwise provided in this act,  
5 this act does not modify or restrict the immunity of the state from  
6 tort liability as it existed before July 1, 1965, which immunity is  
7 affirmed.

8           (2) Except as otherwise provided in this ~~section,~~**act,** and  
9 without regard to the discretionary or ministerial nature of the  
10 conduct in question, each officer and employee of a governmental  
11 agency, each volunteer acting on behalf of a governmental agency,  
12 and each member of a board, council, commission, or statutorily  
13 created task force of a governmental agency is immune from tort  
14 liability for an injury to a person or damage to property caused by  
15 the officer, employee, or member while in the course of employment  
16 or service or caused by the volunteer while acting on behalf of a  
17 governmental agency if all of the following are met:

18           (a) The officer, employee, member, or volunteer is acting or  
19 reasonably believes he or she is acting within the scope of his or  
20 her authority.

21           (b) The governmental agency is engaged in the exercise or  
22 discharge of a governmental function.

23           (c) The officer's, employee's, member's, or volunteer's  
24 conduct does not amount to gross negligence that is the proximate  
25 cause of the injury or damage.

26           (3) Subsection (2) does not alter the law of intentional torts  
27 as it existed before July 7, 1986.

1           (4) This act does not grant immunity to a governmental agency  
2 or an employee or agent of a governmental agency with respect to  
3 providing medical care or treatment to a patient, except medical  
4 care or treatment provided to a patient in a hospital owned or  
5 operated by the department of ~~community~~ health **and human services**  
6 or a hospital owned or operated by the department of corrections  
7 and except care or treatment provided by an uncompensated search  
8 and rescue operation medical assistant or tactical operation  
9 medical assistant.

10           (5) A judge, a legislator, and the elective or highest  
11 appointive executive official of all levels of government are  
12 immune from tort liability for injuries to persons or damages to  
13 property if he or she is acting within the scope of his or her  
14 judicial, legislative, or executive authority.

15           (6) A guardian ad litem is immune from civil liability for an  
16 injury to a person or damage to property if he or she is acting  
17 within the scope of his or her authority as guardian ad litem. This  
18 subsection applies to actions filed before, on, or after May 1,  
19 1996.

20           (7) The immunity provided by this act does not apply to  
21 liability of a governmental agency under the MISS DIG underground  
22 facility damage prevention and safety act, **2013 PA 174, MCL 460.721**  
23 **to 460.733.**

24           (8) As used in this section:

25           (a) "Gross negligence" means conduct so reckless as to  
26 demonstrate a substantial lack of concern for whether an injury  
27 results.

28           (b) "Search and rescue operation" means an action by a  
29 governmental agency to search for, rescue, or recover victims of a

1 natural or manmade disaster, accident, or emergency on land or  
2 water.

3 (c) "Search and rescue operation medical assistant" means an  
4 individual licensed to practice 1 or more of the occupations listed  
5 in subdivision (e), acting within the scope of the license, and  
6 assisting a governmental agency in a search and rescue operation.

7 (d) "Tactical operation" means a coordinated, planned action  
8 by a special operations, weapons, or response team of a law  
9 enforcement agency that is 1 of the following:

10 (i) Taken to deal with imminent violence, a riot, an act of  
11 terrorism, or a similar civic emergency.

12 (ii) The entry into a building, area, watercraft, aircraft,  
13 land vehicle, or body of water to seize evidence, or to arrest an  
14 individual for a felony, under the authority of a warrant issued by  
15 a court.

16 (iii) Training for the team.

17 (e) "Tactical operation medical assistant" means an individual  
18 licensed to practice 1 or more of the following, acting within the  
19 scope of the license, and assisting law enforcement officers while  
20 they are engaged in a tactical operation:

21 (i) Medicine, osteopathic medicine and surgery, or as a  
22 registered professional nurse, under article 15 of the public  
23 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

24 (ii) As an emergency medical technician, emergency medical  
25 technician specialist, or paramedic under part 209 of the public  
26 health code, 1978 PA 368, MCL 333.20901 to 333.20979.

27 **Sec. 7d. (1) Subject to subsection (2), a public university or**  
28 **college or a school district is not immune under this act from tort**  
29 **liability for criminal sexual misconduct that an employee or agent**

1 of the public university or college or school district engages in  
2 during the course of employment or service or while acting on  
3 behalf of the public university or college or school district if  
4 either of the following applies:

5 (a) The public university or college or school district was  
6 negligent in the hiring, supervision, or training of the employee  
7 or agent.

8 (b) The public university or college or school district had  
9 actual or constructive knowledge of the criminal sexual misconduct  
10 and failed to report the criminal sexual misconduct to an  
11 appropriate law enforcement agency.

12 (2) A public university or college or school district may be  
13 held liable for the criminal sexual misconduct of an employee or  
14 agent committed during the course of employment or service or while  
15 acting on behalf of the public university or college or school  
16 district only if both of the following apply:

17 (a) The public university or college or school district had  
18 either of the following:

19 (i) Actual or constructive knowledge that the individual  
20 committed a prior act of criminal sexual misconduct.

21 (ii) Actual or constructive knowledge of the member, officer,  
22 employee, or agent's propensity to act in accordance with a prior  
23 act of criminal sexual misconduct.

24 (b) The public university or college or school district failed  
25 to act or intervene to prevent the subsequent criminal sexual  
26 conduct.

27 (3) Nothing in this, any previous, or any subsequent act  
28 limits the availability of causes of action permitted to a  
29 plaintiff, including causes of action against persons other than

1 the individual alleged to have committed the criminal sexual  
2 conduct.

3 (4) For purposes of this section, it is not necessary for a  
4 criminal prosecution or other proceeding to have been brought as a  
5 result of the criminal sexual conduct or if a criminal prosecution  
6 or other proceeding has been brought, for the prosecution or  
7 proceeding to have resulted in a conviction or adjudication.

8 (5) This section applies retroactively to an action commenced  
9 under section 5851b(4) of the revised judicature act of 1961, 1961  
10 PA 236, MCL 600.5851b.

11 (6) As used in this section only:

12 (a) "Adjudication" means an adjudication of 1 or more offenses  
13 under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL  
14 712A.1 to 712A.32.

15 (b) "Criminal sexual conduct" means conduct prohibited under  
16 section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code,  
17 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and  
18 750.520g.

19 (c) "School district" includes both of the following:

20 (i) An intermediate school district as that term as defined in  
21 section 4 of the revised school code, 1976 PA 451, MCL 380.4.

22 (ii) A public school academy as that term as defined in section  
23 5 of the revised school code, 1976 PA 451, MCL 380.5.

24 Enacting section 1. This amendatory act does not take effect  
25 unless Senate Bill No. 1187 of the 102nd Legislature is enacted  
26 into law.