

HOUSE BILL NO. 5286

November 01, 2023, Introduced by Rep. Brabec and referred to the Committee on Judiciary.

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 sections 1 and 7 (MCL 691.1401 and 691.1407), section 1 as amended by 2012 PA 50 and section 7 as amended by 2013 PA 173.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Governmental agency" means this state or a political
3 subdivision.

4 (b) "Governmental function" means an activity that is
5 expressly or impliedly mandated or authorized by constitution,
6 statute, local charter or ordinance, or other law. Governmental
7 function includes an activity performed on public or private
8 property by a sworn law enforcement officer within the scope of the
9 law enforcement officer's authority, as directed or assigned by his
10 or her public employer for the purpose of public safety.

11 (c) **"Gross negligence" means conduct so reckless as to**
12 **demonstrate a substantial lack of concern for whether an injury**
13 **results.**

14 (d) ~~(e)~~—"Highway" means a public highway, road, or street that
15 is open for public travel. Highway includes a bridge, sidewalk,
16 trailway, crosswalk, or culvert on the highway. Highway does not
17 include an alley, tree, or utility pole.

18 (e) ~~(d)~~—"Municipal corporation" means a city, village, or
19 township or a combination of 2 or more of these when acting
20 jointly.

21 (f) ~~(e)~~—"Political subdivision" means a municipal corporation,
22 county, county road commission, school district, community college
23 district, port district, metropolitan district, or transportation
24 authority or a combination of 2 or more of these when acting

1 jointly; a district or authority authorized by law or formed by 1
2 or more political subdivisions; or an agency, department, court,
3 board, or council of a political subdivision.

4 (g) ~~(f)~~—"Sidewalk", except as used in subdivision ~~(e)~~, ~~(d)~~,
5 means a paved public sidewalk intended for pedestrian use situated
6 outside of and adjacent to the improved portion of a highway
7 designed for vehicular travel.

8 (h) ~~(g)~~—"State" means this state and its agencies,
9 departments, commissions, courts, boards, councils, and statutorily
10 created task forces. State includes a public university or college
11 of this state, whether established as a constitutional corporation
12 or otherwise.

13 (i) ~~(h)~~—"Township" means a general law township or a charter
14 township.

15 (j) ~~(i)~~—"Volunteer" means an individual who is specifically
16 designated as a volunteer and who is acting solely on behalf of a
17 governmental agency.

18 Sec. 7. (1) Except as otherwise provided in this act, a
19 governmental agency is immune from tort liability if the
20 governmental agency is engaged in the exercise or discharge of a
21 governmental function. Except as otherwise provided in this act,
22 this act does not modify or restrict the immunity of the state from
23 tort liability as it existed before July 1, 1965, which immunity is
24 affirmed.

25 (2) Except as otherwise provided in this section, and without
26 regard to the discretionary or ministerial nature of the conduct in
27 question, each officer and employee of a governmental agency, each
28 volunteer acting on behalf of a governmental agency, and each
29 member of a board, council, commission, or statutorily created task

1 force of a governmental agency is immune from tort liability for an
2 injury to a person or damage to property caused by the officer,
3 employee, or member while in the course of employment or service or
4 caused by the volunteer while acting on behalf of a governmental
5 agency if all of the following are met:

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

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

11 (c) The officer's, employee's, member's, or volunteer's
12 conduct does not amount to gross negligence that is ~~the~~**a** proximate
13 cause of the injury or damage.

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

16 (4) This act does not grant immunity to a governmental agency
17 or an employee or agent of a governmental agency with respect to
18 providing medical care or treatment to a patient, except medical
19 care or treatment provided to a patient in a hospital owned or
20 operated by the department of ~~community~~**health and human services**
21 or a hospital owned or operated by the department of corrections
22 and except care or treatment provided by an uncompensated search
23 and rescue operation medical assistant or tactical operation
24 medical assistant.

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

1 (6) A guardian ad litem is immune from civil liability for an
 2 injury to a person or damage to property if he or she is acting
 3 within the scope of his or her authority as guardian ad litem. This
 4 subsection applies to actions filed before, on, or after May 1,
 5 1996.

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

10 (8) As used in this section:

11 ~~(a) "Gross negligence" means conduct so reckless as to~~
 12 ~~demonstrate a substantial lack of concern for whether an injury~~
 13 ~~results.~~

14 **(a)** ~~(b)~~ "Search and rescue operation" means an action by a
 15 governmental agency to search for, rescue, or recover victims of a
 16 natural or manmade disaster, accident, or emergency on land or
 17 water.

18 **(b)** ~~(e)~~ "Search and rescue operation medical assistant" means
 19 an individual licensed to practice 1 or more of the occupations
 20 listed in subdivision ~~(e)~~, **(d)**, acting within the scope of the
 21 license, and assisting a governmental agency in a search and rescue
 22 operation.

23 **(c)** ~~(d)~~ "Tactical operation" means a coordinated, planned
 24 action by a special operations, weapons, or response team of a law
 25 enforcement agency that is 1 of the following:

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

28 (ii) The entry into a building, area, watercraft, aircraft,
 29 land vehicle, or body of water to seize evidence, or to arrest an

1 individual for a felony, under the authority of a warrant issued by
2 a court.

3 (iii) Training for the team.

4 (d) ~~(e)~~ "Tactical operation medical assistant" means an
5 individual licensed to practice 1 or more of the following, acting
6 within the scope of the license, and assisting law enforcement
7 officers while they are engaged in a tactical operation:

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

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