

**SUBSTITUTE FOR
SENATE BILL NO. 39**

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 2005 PA 318.

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

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

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

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

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

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

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

26 (4) This act does not grant immunity to a governmental agency
27 or an employee or agent of a governmental agency with respect to

1 providing medical care or treatment to a patient, except medical
2 care or treatment provided to a patient in a hospital owned or
3 operated by the department of community health or a hospital owned
4 or operated by the department of corrections and except care or
5 treatment provided by an uncompensated search and rescue operation
6 medical assistant or tactical operation medical assistant.

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

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

17 (7) A LAW ENFORCEMENT OFFICER WHO IS NOT ACTING IN THE COURSE
18 OF EMPLOYMENT OR SERVICE IS IMMUNE FROM TORT LIABILITY FOR AN
19 INJURY TO A PERSON OR DAMAGE TO PROPERTY CAUSED BY THE OFFICER IF
20 ALL OF THE FOLLOWING APPLY:

21 (A) THE OFFICER, IN GOOD FAITH, ACTS IN RESPONSE TO AN
22 EMERGENCY SITUATION THAT PRESENTS THE THREAT OF IMMEDIATE SERIOUS
23 PHYSICAL INJURY OR DEATH TO ANOTHER INDIVIDUAL.

24 (B) THE ACTS OF THE OFFICER WOULD BE WITHIN THE SCOPE OF THE
25 OFFICER'S AUTHORITY IF THE OFFICER WERE ACTING IN THE COURSE OF HIS
26 OR HER EMPLOYMENT OR SERVICE.

27 (C) THE ACTS OF THE OFFICER DID NOT AMOUNT TO GROSS NEGLIGENCE

1 OR WILLFUL AND WANTON MISCONDUCT.

2 (8) ~~(7)~~—As used in this section:

3 (a) "Gross negligence" means conduct so reckless as to
4 demonstrate a substantial lack of concern for whether an injury
5 results.

6 (B) "LAW ENFORCEMENT OFFICER" MEANS THAT TERM AS DEFINED IN
7 SECTION 2 OF THE COMMISSION ON LAW ENFORCEMENT STANDARDS ACT, 1965
8 PA 203, MCL 28.602.

9 (C) ~~(b)~~—"Search and rescue operation" means an action by a
10 governmental agency to search for, rescue, or recover victims of a
11 natural or manmade disaster, accident, or emergency on land or
12 water.

13 (D) ~~(e)~~—"Search and rescue operation medical assistant" means
14 an individual licensed to practice 1 or more of the occupations
15 listed in subdivision ~~(e)~~—(F), acting within the scope of the
16 license, and assisting a governmental agency in a search and rescue
17 operation.

18 (E) ~~(d)~~—"Tactical operation" means a coordinated, planned
19 action by a special operations, weapons, or response team of a law
20 enforcement agency that is 1 of the following:

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

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

27 (iii) Training for the team.

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

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

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