

SENATE BILL No. 39

January 27, 2009, Introduced by Senators BASHAM and CHERRY 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 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
3 governmental agency is engaged in the exercise or discharge of a

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

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

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

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

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

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

25 (4) This act does not grant immunity to a governmental agency
26 or an employee or agent of a governmental agency with respect to
27 providing medical care or treatment to a patient, except medical

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

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

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

16 (7) As used in this section:

17 **(A) "COURSE OF EMPLOYMENT OR SERVICE" INCLUDES, IF THE OFFICER**
18 **OR EMPLOYEE IS A PEACE OFFICER, COMING TO THE AID OF AN INDIVIDUAL**
19 **WHO IS THREATENED WITH INJURY OR DEATH WHILE THE OFFICER IS OUTSIDE**
20 **THE GEOGRAPHICAL BOUNDARIES OF THE COUNTY, CITY, VILLAGE, TOWNSHIP,**
21 **OR UNIVERSITY THAT EMPLOYS THE OFFICER.**

22 **(B) ~~(a)~~**"Gross negligence" means conduct so reckless as to
23 demonstrate a substantial lack of concern for whether an injury
24 results.

25 **(C) ~~(b)~~**"Search and rescue operation" means an action by a
26 governmental agency to search for, rescue, or recover victims of a
27 natural or manmade disaster, accident, or emergency on land or

1 water.

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

7 (E) ~~(d)~~—"Tactical operation" means a coordinated, planned
8 action 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 (F) ~~(e)~~—"Tactical operation medical assistant" means an
18 individual licensed to practice 1 or more of the following, acting
19 within the scope of the license, and assisting law enforcement
20 officers while 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.