

Act No. 288
Public Acts of 2020
Approved by the Governor
December 29, 2020
Filed with the Secretary of State
December 29, 2020
EFFECTIVE DATE: March 24, 2021

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Reps. Hall, Schroeder, Webber, VanWoerkom, LaFave and LaGrand

ENROLLED HOUSE BILL No. 5426

AN ACT to amend 2017 PA 132, entitled “An act to create a program under which volunteers may provide services to organizations in this state to respond to cybersecurity incidents; to provide for protection from liability for personal injury and property damage; to provide for the powers and duties of state governmental officers and agencies; and to create the Michigan cyber civilian corps advisory board and prescribe its powers and duties,” by amending sections 2, 3, 4, 5, 6, and 7 (MCL 18.222, 18.223, 18.224, 18.225, 18.226, and 18.227).

The People of the State of Michigan enact:

Sec. 2. As used in this act:

- (a) “Advisory board” means the Michigan cyber civilian corps advisory board created under section 9.
- (b) “Chief information officer” means the individual within the department designated by the governor as the chief information officer for this state.
- (c) “Client” means a municipal, educational, nonprofit, or critical infrastructure organization that has requested and is using the rapid response assistance of the Michigan cyber civilian corps under the direction of the department.
- (d) “Critical infrastructure” means systems and assets, whether physical or virtual, so vital to the United States or this state that the incapacity or destruction of that system or asset would have a debilitating impact on security, economic security, public health or safety, or any combination of these as determined by the department.
- (e) “Cybersecurity incident” means an event occurring on or conducted through a computer network that actually or imminently jeopardizes the integrity, confidentiality, or availability of computers, information or communications systems or networks, physical or virtual infrastructure controlled by computers or information systems, or information resident on any of these. Cybersecurity incident includes, but is not limited to, the existence of a vulnerability in an information system, system security procedures, internal controls, or implementation that is subject to exploitation.
- (f) “Department” means the department of technology, management, and budget.
- (g) “Michigan cyber civilian corps advisor” or “advisor” means an individual who has entered into a volunteer agreement with the department to serve as a nondeployable advisor in the Michigan cyber civilian corps.
- (h) “Michigan cyber civilian corps” means the program established by this act under which civilian volunteers who have expertise in addressing cybersecurity incidents may volunteer at the invitation of the department to provide rapid response assistance to a municipal, educational, nonprofit, or critical infrastructure organization in need of expert assistance during a cybersecurity incident.
- (i) “Michigan cyber civilian corps volunteer” means an individual who has entered into a volunteer agreement

with the department to serve as a deployable volunteer in the Michigan cyber civilian corps.

(j) "Volunteer agreement" means the contract entered into between the department and a Michigan cyber civilian corps volunteer or advisor under section 4.

Sec. 3. The department may appoint individuals to serve as Michigan cyber civilian corps volunteers and Michigan cyber civilian corps advisors for the purposes of facilitating the responsibilities of the department as provided in this act.

Sec. 4. The department shall enter into a contract with any individual who wishes to accept an invitation by the department to serve as a Michigan cyber civilian corps volunteer or Michigan cyber civilian corps advisor and meets the qualifying criteria for those positions as determined by the advisory board. The contract must include, at a minimum, all of the following:

(a) A provision acknowledging the confidentiality of information relating to this state, state residents, and clients.

(b) A provision protecting from disclosure any confidential information of this state, state residents, or clients acquired by the Michigan cyber civilian corps volunteer or advisor through participation in the Michigan cyber civilian corps.

(c) A provision requiring the Michigan cyber civilian corps volunteer to avoid conflicts of interest that might arise from a particular deployment.

(d) A provision requiring the Michigan cyber civilian corps volunteer or advisor to comply with all existing department security policies and procedures regarding information technology resources.

(e) A provision requiring the Michigan cyber civilian corps volunteer or advisor to consent to background screening considered appropriate by the department under this act, and a section in which the individual gives that consent as described in section 5.

(f) A provision requiring the Michigan cyber civilian corps volunteer or advisor to attest that he or she meets any standards of expertise that may be established by the department.

Sec. 5. (1) When an individual accepts an invitation to serve as a Michigan cyber civilian corps volunteer or advisor as described in section 4, the department shall request the department of state police to do both of the following:

(a) Conduct a criminal history check on the individual.

(b) Conduct a criminal records check through the Federal Bureau of Investigation on the individual.

(2) An individual who accepts an invitation to the Michigan cyber civilian corps shall give written consent in the volunteer agreement for the department of state police to conduct the criminal history check and criminal records check required under this section. The department shall require the individual to submit his or her fingerprints to the department of state police and the Federal Bureau of Investigation for the criminal records check.

(3) The department shall request a criminal history check and criminal records check under this section on all individuals who wish to participate as Michigan cyber civilian corps volunteers or advisors. The department shall make the request on a form and in the manner prescribed by the department of state police.

(4) Within a reasonable time after receiving a complete request by the department for a criminal history check and criminal records check on an individual under this section, the department of state police shall conduct the criminal history check and provide a report of the results to the department. The report must indicate that the individual is cleared or not cleared to become a Michigan cyber civilian corps volunteer or advisor.

(5) Within a reasonable time after receiving a proper request by the department for a criminal records check on an individual under this section, the department of state police shall initiate the criminal records check with the Federal Bureau of Investigation. After receiving the results of the criminal records check from the Federal Bureau of Investigation, the department of state police shall provide a report to the department that indicates that the individual is cleared or not cleared to become a Michigan cyber civilian corps volunteer or advisor.

(6) If a criminal arrest fingerprint is subsequently submitted to the department of state police and matches against a fingerprint that was submitted pursuant to this act and stored in its automated fingerprint identification system (AFIS) database, the department of state police shall notify the department that the

individual is still cleared or is no longer cleared to continue as a Michigan cyber civilian corps volunteer. When the department of state police is able to participate with the Federal Bureau of Investigation automatic notification system, then any subsequent arrest fingerprint submitted to the Federal Bureau of Investigation must also be reviewed by the department of state police. The department of state police shall provide a report to the department that indicates that the individual is still cleared or is no longer cleared to continue as a Michigan cyber civilian corps volunteer or advisor.

(7) If a background check results in previous criminal history, the individual may appeal to the director or his or her designee for nondeployable Michigan cyber civilian corps advisor status.

(8) Michigan cyber civilian corps volunteers or advisors may not engage in training until either the background check or appeal regarding the background check process has been completed.

Sec. 6. (1) A Michigan cyber civilian corps volunteer or advisor is not an agent, employee, or independent contractor of this state for any purpose and has no authority to bind this state with regard to third parties.

(2) This state is not liable to a Michigan cyber civilian corps volunteer or advisor for personal injury or property damage suffered by the Michigan cyber civilian corps volunteer through participation in the Michigan cyber civilian corps.

Sec. 7. (1) Except as otherwise provided in this section, the department and this state are immune from tort liability for acts or omissions by a Michigan cyber civilian corps volunteer or advisor under this act.

(2) Except as otherwise provided in this section, and without regard to discretionary or ministerial nature of the conduct of a Michigan cyber civilian corps volunteer or advisor, each Michigan cyber civilian corps volunteer or advisor is immune from tort liability for an injury to a person or damage to property that occurred while deployed and acting on behalf of the department if all of the following are met:

(a) The Michigan cyber civilian corps volunteer or advisor is acting or reasonably believes that he or she is acting within the scope of his or her authority.

(b) The Michigan cyber civilian corps volunteer's or advisor's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

(c) The Michigan cyber civilian corps volunteer's or advisor's conduct is not a material breach of the volunteer agreement during that deployment.


(3) If a claim is made or a civil action is commenced against a Michigan cyber civilian corps volunteer or advisor for injuries to persons or property caused by negligence of a Michigan cyber civilian corps volunteer or advisor that occurred while in the course of his or her deployment on behalf of the department and while acting within the scope of his or her authority, the department may pay for, engage, or furnish the services of an attorney to advise the Michigan cyber civilian corps volunteer or advisor as to the claim and to appear for and represent the Michigan cyber civilian corps volunteer or advisor in the action. The department may compromise, settle, and pay the claim before or after the commencement of a civil action. Whenever a judgment for damages is awarded against a Michigan cyber civilian corps volunteer or advisor as a result of a civil action for personal injuries or property damage caused by the Michigan cyber civilian corps volunteer or advisor while in the course of his or her deployment and while acting within the scope of his or her authority, the department may indemnify the Michigan cyber civilian corps volunteer or advisor or pay, settle, or compromise the judgment.

(4) If a criminal action is commenced against a Michigan cyber civilian corps volunteer or advisor based upon the conduct of the Michigan cyber civilian corps volunteer or advisor in the course of his or her deployment, if the Michigan cyber civilian corps volunteer or advisor had a reasonable basis for believing that he or she was acting within the scope of his or her authority at the time of the alleged conduct, the department may pay for, engage, or furnish the services of an attorney to advise the Michigan cyber civilian corps volunteer or advisor as to the action, and to appear for and represent the Michigan cyber civilian corps volunteer or advisor in the action. A Michigan cyber civilian corps volunteer or advisor who has incurred legal expenses for conduct prescribed in this subsection may obtain reimbursement for those expenses under this subsection.

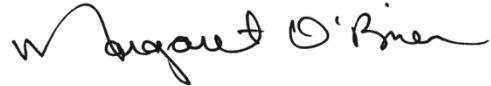
(5) This section does not impose liability on this state or the department.

(6) As used in this section, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5427 of the 100th Legislature is enacted into law.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor