

Act No. 389
Public Acts of 1998
Approved by the Governor
November 25, 1998
Filed with the Secretary of State
November 30, 1998
EFFECTIVE DATE: November 30, 1998

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Rep. Profit

Reps. Agee, Alley, Baade, Baird, Bogardus, Brewer, Brown, Callahan, Cherry, Curtis, DeHart, Dobronski, Frank, Freeman, Gagliardi, Gire, Goschka, Hale, Hanley, Harder, Hertel, Hood, Kaza, Kelly, Kilpatrick, Kukuk, Law, Mans, Martinez, McBryde, Murphy, Olshove, Owen, Parks, Prusi, Schauer, Schermesser, Scott, Stallworth, Tesanovich, Thomas, Varga, Vaughn, Wallace, Wetters, Willard and Wojno named co-sponsors

ENROLLED HOUSE BILL No. 4044

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," (MCL 600.101 to 600.9948) by adding sections 2965, 2966, and 2967.

The People of the State of Michigan enact:

Sec. 2965. The common law doctrine that precludes a firefighter or police officer from recovering damages for injuries arising from the normal, inherent, and foreseeable risks of his or her profession is abolished.

Sec. 2966. The state, a political subdivision of this state, or a governmental agency, governmental officer or employee, volunteer acting on behalf of a government, and member of a governmentally created board, council, commission, or task force are immune from tort liability for an injury to a firefighter or police officer that arises from the normal, inherent, and foreseeable risks of the firefighter's or police officer's profession. This section shall not be construed to affect an individual's rights to benefits provided under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

Sec. 2967. (1) Except as provided in section 2966, a firefighter or police officer who seeks to recover damages for injury or death arising from the normal, inherent, and foreseeable risks of his or her profession while acting in his or her official capacity must prove that 1 or more of the following circumstances are present:

(a) An injury or resulting death that is a basis for the cause of action was caused by a person's conduct and that conduct is 1 or more of the following:

(i) Grossly negligent.

(ii) Wanton.

(iii) Willful.

(iv) Intentional.

(v) Conduct that results in a conviction, guilty plea, or plea of no contest to a crime under state or federal law, or a local criminal ordinance that substantially corresponds to a crime under state law.

(b) The cause of action is a product liability action that is based on firefighting or police officer equipment that failed while it was being used by the firefighter or police officer during the legally required or authorized duties of the profession, which duties were performed during an emergency situation and which duties substantially increased the likelihood of the resulting death or injury, and all of the following are true:

(i) The negligent person is not someone whose act or omission resulted in the firefighter's or police officer's presence at the place where the injury occurred; or the person is someone whose act or omission resulted in the firefighter's or police officer's presence at the place where the injury occurred and the action is based on an act by that person that occurred after the firefighter or police officer arrived at the place where the injury occurred.

(ii) The negligent person is not someone from whom the firefighter or police officer had sought or obtained assistance or is not an owner or tenant of the property from where the firefighter or police officer sought or obtained assistance.

(iii) The negligent person is not someone who is an owner or tenant of the property that the firefighter or police officer was on in his or her official capacity; or the person is someone who is an owner or tenant of the property that the firefighter or police officer was on in his or her official capacity and the action is based on an act by that person that occurred after the firefighter or police officer arrived at the place where the injury occurred.

(c) An injury or resulting death that is a basis for the cause of action was caused by a person's ordinary negligence and all of the following are true:

(i) The negligent person is not someone whose act or omission resulted in the firefighter's or police officer's presence at the place where the injury occurred; or the person is someone whose act or omission resulted in the firefighter's or police officer's presence at the place where the injury occurred and the action is based on an act by that person that occurred after the firefighter or police officer arrived at the place where the injury occurred.

(ii) The negligent person is not someone from whom the firefighter or police officer had sought or obtained assistance or is not an owner or tenant of the property from where the firefighter or police officer sought or obtained assistance.

(iii) The negligent person is not someone who is an owner or tenant of the property that the firefighter or police officer was on in his or her official capacity; or the person is someone who is an owner or tenant of the property that the firefighter or police officer was on in his or her official capacity and the action is based on an act by that person that occurred after the firefighter or police officer arrived at the place where the injury occurred.

(iv) The firefighter or police officer was engaged in 1 or more of the following:

(A) Operating, or riding in or on, a motor vehicle that is being operated in conformity with the laws applicable to the general public.

(B) An act involving the legally required or authorized duties of the profession that did not substantially increase the likelihood of the resulting death or injury. The court shall not consider the firefighter or police officer to have been engaged in an act that substantially increased the likelihood of death or injury if the injury occurred within a highway right-of-way, if there was emergency lighting activated at the scene, and if the firefighter or police officer was engaged in emergency medical services, accessing a fire hydrant, traffic control, motorist assistance, or a traffic stop for a possible violation of law.

(2) This section shall not be construed to affect a right, remedy, procedure, or limitation of action that is otherwise provided by statute or common law.

(3) As used in this section:

(a) "Grossly negligent" means conduct so reckless as to demonstrate a substantial lack of concern for whether injury results.

(b) "Person" means an individual or a partnership, corporation, limited liability company, association, or other legal entity.

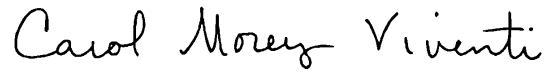
(c) "Product liability action" means that term as defined in section 2945.

Enacting section 1. Sections 2965, 2966, and 2967 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2965, 600.2966, and 600.2967, as added by this amendatory act, do not apply to a cause of action arising before the effective date of this amendatory act.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved -----

Governor.