

# HOUSE BILL No. 4938

October 6, 2015, Introduced by Reps. Franz, Kelly, Hughes, McBroom, Yonker and Price  
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 2013 PA 173.

**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  
4 governmental function. Except as otherwise provided in this act,

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

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

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

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

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

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

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

1 operated by the department of ~~community~~ health **AND HUMAN SERVICES**  
2 or a hospital owned or operated by the department of corrections  
3 and except care or treatment provided by an uncompensated search  
4 and rescue operation medical assistant or tactical operation  
5 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~~  
9 **DAMAGE** to property if he or she is acting within the scope of his  
10 or her judicial, legislative, or executive authority.

11 (6) **A MEMBER OF THE MICHIGAN NATIONAL GUARD, REGARDLESS OF THE**  
12 **MEMBER'S DUTY STATUS, IS IMMUNE FROM TORT LIABILITY FOR INJURIES TO**  
13 **A PERSON OR DAMAGE TO PROPERTY IF THE MEMBER IS PARTICIPATING AS A**  
14 **MEMBER OF A TACTICAL OPERATION. THE IMMUNITY PROVIDED BY THIS**  
15 **SUBSECTION IS IN ADDITION TO ANY OTHER IMMUNITY AVAILABLE UNDER THE**  
16 **LAW.**

17 (7) ~~(6)~~ A guardian ad litem is immune from civil liability for  
18 an injury to a person or damage to property if he or she is acting  
19 within the scope of his or her authority as guardian ad litem. ~~This~~  
20 ~~subsection applies to actions filed before, on, or after May 1,~~  
21 ~~1996.~~

22 (8) ~~(7)~~ The immunity provided by this act does not apply to  
23 liability of a governmental agency under the MISS DIG underground  
24 facility damage prevention and safety act, **2013 PA 174, MCL 460.721**  
25 **TO 460.733.**

26 (9) ~~(8)~~ As used in this section:

27 (a) "Gross negligence" means conduct so reckless as to

1 demonstrate a substantial lack of concern for whether an injury  
2 results.

3 (b) "Search and rescue operation" means an action by a  
4 governmental agency to search for, rescue, or recover victims of a  
5 natural or manmade disaster, accident, or emergency on land or  
6 water.

7 (c) "Search and rescue operation medical assistant" means an  
8 individual licensed to practice 1 or more of the occupations listed  
9 in subdivision (e), acting within the scope of the license, and  
10 assisting a governmental agency in a search and rescue operation.

11 (d) "Tactical operation" means a coordinated, planned action  
12 by a special operations, weapons, or response team of a law  
13 enforcement agency that is 1 of the following:

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

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

20 (iii) Training for the team.

21 (e) "Tactical operation medical assistant" means an individual  
22 licensed to practice 1 or more of the following, acting within the  
23 scope of the license, and assisting law enforcement officers while  
24 they are engaged in a tactical operation:

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

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

4           Enacting section 1. This amendatory act takes effect 90 days  
5 after the date it is enacted into law.