

HOUSE BILL NO. 5548

March 06, 2024, Introduced by Rep. Schriver and referred to the Committee on Government Operations.

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 sections 1 and 7 (MCL 691.1401 and 691.1407), section 1 as amended by 2012 PA 50 and section 7 as amended by 2013 PA 173, and by adding section 6b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Governmental agency" means this state or a political
3 subdivision.

4 (b) "Governmental function" means an activity that is
5 expressly or impliedly mandated or authorized by constitution,
6 statute, local charter or ordinance, or other law. Governmental
7 function includes an activity performed on public or private
8 property by a sworn law enforcement officer within the scope of the
9 law enforcement officer's authority, as directed or assigned by his
10 or her public employer for the purpose of public safety.

11 (c) **"Gross negligence" means conduct so reckless as to**
12 **demonstrate a substantial lack of concern for whether an injury**
13 **results.**

14 (d) ~~(e)~~—"Highway" means a public highway, road, or street that
15 is open for public travel. Highway includes a bridge, sidewalk,
16 trailway, crosswalk, or culvert on the highway. Highway does not
17 include an alley, tree, or utility pole.

18 (e) ~~(d)~~—"Municipal corporation" means a city, village, or
19 township or a combination of 2 or more of these when acting
20 jointly.

21 (f) ~~(e)~~—"Political subdivision" means a municipal corporation,
22 county, county road commission, school district, community college
23 district, port district, metropolitan district, or transportation

1 authority or a combination of 2 or more of these when acting
2 jointly; a district or authority authorized by law or formed by 1
3 or more political subdivisions; or an agency, department, court,
4 board, or council of a political subdivision.

5 (g) ~~(f)~~—"Sidewalk", except as used in subdivision ~~(e)~~, ~~(d)~~,
6 means a paved public sidewalk intended for pedestrian use situated
7 outside of and adjacent to the improved portion of a highway
8 designed for vehicular travel.

9 (h) ~~(g)~~—"State" means this state and its agencies,
10 departments, commissions, courts, boards, councils, and statutorily
11 created task forces. State includes a public university or college
12 of this state, whether established as a constitutional corporation
13 or otherwise.

14 (i) ~~(h)~~—"Township" means a general law township or a charter
15 township.

16 (j) ~~(i)~~—"Volunteer" means an individual who is specifically
17 designated as a volunteer and who is acting solely on behalf of a
18 governmental agency.

19 **Sec. 6b. (1) A school district is liable for damages that**
20 **arise from the death or serious personal injury of a student,**
21 **employee, officer, or volunteer of the school district if the death**
22 **or serious personal injury occurs on property of the school**
23 **district and if the gross negligence of a school district officer,**
24 **employee, or volunteer was a proximate cause of the death or**
25 **serious personal injury. The gross negligence of a school district**
26 **officer, employee, or volunteer may consist of any of the**
27 **following:**

28 (a) Subject to subsection (2), failing to report any of the
29 following to the appropriate school district officer or employee or

1 to a law enforcement agency, or both, if a reasonably careful
2 school district officer, employee, or volunteer would report the
3 threat under the circumstances:

4 (i) A threat to injure, including, but not limited to, a threat
5 to kill, a school district student, employee, officer, or
6 volunteer.

7 (ii) A threat to damage school district property, if the
8 threatened destructive conduct might result in injury, including,
9 but not limited to, death, to a school district student, employee,
10 officer, or volunteer.

11 (b) Failing to report conduct of a school district student, or
12 of a former student who is less than 22 years old, that would
13 indicate to a reasonable person that the student or former student
14 may present a risk of death or serious personal injury to a school
15 district student, employee, officer, or volunteer, regardless of
16 the manner in which the officer, employee, or volunteer gains
17 knowledge of the conduct, to the appropriate school district
18 officer or employee or to a law enforcement agency, or both, if a
19 reasonably careful school district officer, employee, or volunteer
20 would report the conduct under the circumstances.

21 (c) Failing to do anything else that a reasonably careful
22 school district officer, employee, or volunteer would do under the
23 circumstances to prevent death or serious personal injury.

24 (2) Under subsection (1) (b), a threat must amount to fighting
25 words, incitement to violence, or similar language. The school
26 district officer, employee, or volunteer must have credible
27 evidence of the threat, not just hearsay evidence. A threat
28 includes tangible evidence that a crime could be committed soon,
29 such as a detailed drawing or a social media post.

1 (3) An officer, employee, or volunteer of a school district
2 whose gross negligence was a proximate cause of the death or
3 serious personal injury as described in subsection (1) is also
4 liable for the damages that arise from the death or serious
5 personal injury.

6 (4) As used in this section, "serious personal injury" means
7 serious impairment of body function, as that term is defined in
8 section 3135 of the insurance code of 1956, 1956 PA 218, MCL
9 500.3135.

10 Sec. 7. (1) Except as otherwise provided in this act, a
11 governmental agency is immune from tort liability if the
12 governmental agency is engaged in the exercise or discharge of a
13 governmental function. Except as otherwise provided in this act,
14 this act does not modify or restrict the immunity of the state from
15 tort liability as it existed before July 1, 1965, which immunity is
16 affirmed.

17 (2) Except as otherwise provided in this section, and without
18 regard to the discretionary or ministerial nature of the conduct in
19 question, each officer and employee of a governmental agency, each
20 volunteer acting on behalf of a governmental agency, and each
21 member of a board, council, commission, or statutorily created task
22 force of a governmental agency is immune from tort liability for an
23 injury to a person or damage to property caused by the officer,
24 employee, or member while in the course of employment or service or
25 caused by the volunteer while acting on behalf of a governmental
26 agency if all of the following are met:

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

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

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

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

8 (4) This act does not grant immunity to a governmental agency
9 or an employee or agent of a governmental agency with respect to
10 providing medical care or treatment to a patient, except medical
11 care or treatment provided to a patient in a hospital owned or
12 operated by the department of ~~community~~ health **and human services**
13 or a hospital owned or operated by the department of corrections
14 and except care or treatment provided by an uncompensated search
15 and rescue operation medical assistant or tactical operation
16 medical assistant.

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

22 (6) A guardian ad litem is immune from civil liability for an
23 injury to a person or damage to property if he or she is acting
24 within the scope of his or her authority as guardian ad litem. This
25 subsection applies to actions filed before, on, or after May 1,
26 1996.

27 (7) The immunity provided by this act does not apply to
28 liability of a governmental agency under the MISS DIG underground
29 facility damage prevention and safety act, **2013 PA 174, MCL 460.721**

1 to 460.733.

2 (8) Subsection (2) does not apply to the liability of an
3 officer, employee, or volunteer of a school district for death or
4 serious personal injury under section 6b.

5 (9) ~~(8)~~—As used in this section:

6 ~~(a) "Gross negligence" means conduct so reckless as to~~
7 ~~demonstrate a substantial lack of concern for whether an injury~~
8 ~~results.~~

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

18 (c) ~~(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.

28 (d) ~~(e)~~—"Tactical operation medical assistant" means an
29 individual licensed to practice 1 or more of the following, acting

1 within the scope of the license, and assisting law enforcement
2 officers while they are engaged in a tactical operation:

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

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