

HOUSE BILL No. 4474

March 5, 1991, Introduced by Rep. Perry Bullard and referred to the Committee on Judiciary.

A bill to amend section 7 of Act No. 170 of the Public Acts of 1964, entitled as amended

"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 and paying damages sought or awarded against them; to provide for the legal defense of public officers and employees; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal certain acts and parts of acts,"

as amended by Act No. 175 of the Public Acts of 1986, being section 691.1407 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 7 of Act No. 170 of the Public Acts of
2 1964, as amended by Act No. 175 of the Public Acts of 1986, being

1 section 691.1407 of the Michigan Compiled Laws, is amended to
2 read as follows:

3 Sec. 7. (1) Except as otherwise provided in this act, ~~all~~
4 A governmental ~~agencies~~ AGENCY ENGAGED IN THE EXERCISE OR DIS-
5 CHARGE OF A GOVERNMENTAL FUNCTION shall be immune from tort
6 liability. ~~in all cases wherein the government agency is~~
7 ~~engaged in the exercise or discharge of a governmental function.~~
8 Except as otherwise provided in this act, this act shall not be
9 construed as modifying or restricting the immunity of the state
10 from tort liability as it existed before July 1, 1965, which
11 immunity is affirmed.

12 (2) Except as otherwise provided in this section, and with-
13 out regard to the discretionary or ministerial nature of the con-
14 duct in question, each officer and employee of a governmental
15 agency, each volunteer acting on behalf of a governmental agency,
16 and each member of a board, council, commission, or statutorily
17 created task force of a governmental agency shall be immune from
18 tort liability for injuries to persons or damages to property
19 caused by the officer, employee, or member while in the course of
20 employment or service, or BY THE volunteer while acting on behalf
21 of a governmental agency, if all of the following are met:

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

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

1 (c) The officer's, employee's, member's, or volunteer's
2 conduct does not amount to gross negligence that is the proximate
3 cause of the injury or damage. As used in this subdivision,
4 "gross negligence" means conduct so reckless as to demonstrate a
5 substantial lack of concern for whether an injury results.

6 (3) Subsection (2) shall not be construed as altering the
7 law of intentional torts as it existed prior to ~~the effective~~
8 ~~date of subsection (2)~~ JULY 7, 1986.

9 (4) This act does not grant immunity to a governmental
10 agency with respect to the ownership or operation of a hospital
11 or county medical care facility or to the agents or employees of
12 ~~such~~ A hospital or county medical care facility. As used in
13 this subsection:

14 (a) "County medical care facility" means that term as
15 defined in section 20104 of the public health code, Act No. 368
16 of the Public Acts of 1978, being section 333.20104 of the
17 Michigan Compiled Laws.

18 (b) "Hospital" means a facility offering inpatient, over-
19 night care, and services for observation ~~—~~ AND diagnosis, and
20 active treatment of an individual with a medical, surgical,
21 obstetric, chronic, or rehabilitative condition requiring the
22 daily direction or supervision of a physician. The term does not
23 include a hospital owned or operated by the department of mental
24 health or a hospital operated by the department of corrections.

25 (5) Judges, legislators, and the elective or highest
26 appointive executive officials of all levels of government are
27 immune from tort liability for injuries to persons or damages to

1 property whenever they are acting within the scope of their
2 judicial, legislative, or executive authority.

3 (6) THIS ACT DOES NOT GRANT IMMUNITY TO A GOVERNMENTAL
4 AGENCY WITH RESPECT TO THE OWNERSHIP OR OPERATION OF A SCHOOL OR
5 OTHER FACILITY FOR THE HANDICAPPED, OR TO A STATE OFFICER,
6 EMPLOYEE, OR OTHER AGENT OF THE STATE WHO OPERATES OR IS EMPLOYED
7 IN A SCHOOL OR OTHER FACILITIES FOR THE HANDICAPPED, IN ANY
8 INSTANCE IN WHICH A PERSON IN THE COURSE OF RECEIVING CARE OR
9 EDUCATION FROM OR WHILE RESIDING AT A SCHOOL OR OTHER FACILITY
10 FOR THE HANDICAPPED OWNED OR OPERATED BY A GOVERNMENTAL AGENCY
11 SUFFERS DAMAGES ARISING FROM PHYSICAL ASSAULT, SEXUAL ABUSE, OR
12 SEXUAL ASSAULT.