

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4044**

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9948) by adding sections 2965, 2966, and
2967.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2965. THE COMMON LAW DOCTRINE THAT PRECLUDES A FIRE-
2 FIGHTER OR POLICE OFFICER FROM RECOVERING DAMAGES FOR INJURIES
3 ARISING FROM THE NORMAL, INHERENT, AND FORESEEABLE RISKS OF HIS
4 OR HER PROFESSION IS ABOLISHED.

5 SEC. 2966. THE STATE, A POLITICAL SUBDIVISION OF THIS
6 STATE, OR A GOVERNMENTAL AGENCY, GOVERNMENTAL OFFICER OR EMPLOY-
7 EE, VOLUNTEER ACTING ON BEHALF OF A GOVERNMENT, AND MEMBER OF A
8 GOVERNMENTALLY CREATED BOARD, COUNCIL, COMMISSION, OR TASK FORCE
9 ARE IMMUNE FROM TORT LIABILITY FOR AN INJURY TO A FIREFIGHTER OR
10 POLICE OFFICER THAT ARISES FROM THE NORMAL, INHERENT, AND

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1 FORESEEABLE RISKS OF THE FIREFIGHTER'S OR POLICE OFFICER'S
2 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.

3 [SEC. 2967. (1) EXCEPT AS PROVIDED IN SECTION 2966, A
4 FIREFIGHTER OR POLICE OFFICER WHO SEEKS TO RECOVER DAMAGES FOR
5 INJURY OR DEATH ARISING FROM THE NORMAL, INHERENT, AND FORESEEABLE
6 RISKS OF HIS OR HER PROFESSION WHILE ACTING IN HIS OR HER OFFICIAL
7 CAPACITY MUST PROVE THAT 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES
8 ARE PRESENT:

9 (A) AN INJURY OR RESULTING DEATH THAT IS A BASIS FOR THE CAUSE
10 OF ACTION WAS CAUSED BY A PERSON'S CONDUCT AND THAT CONDUCT IS 1 OR
11 MORE OF THE FOLLOWING:

12 (i) GROSSLY NEGLIGENT.

13 (ii) WANTON.

14 (iii) WILLFUL.

15 (iv) INTENTIONAL.

16 (v) CONDUCT THAT RESULTS IN A CONVICTION, GUILTY PLEA, OR PLEA
17 OF NO CONTEST TO A CRIME UNDER STATE OR FEDERAL LAW, OR A LOCAL
18 CRIMINAL ORDINANCE THAT SUBSTANTIALLY CORRESPONDS TO A CRIME UNDER
19 STATE LAW.

20 (B) THE CAUSE OR ACTION IS A PRODUCT LIABILITY ACTION THAT IS
21 BASED ON FIREFIGHTING OR POLICE OFFICER EQUIPMENT THAT FAILED WHILE
22 IT WAS BEING USED BY THE FIREFIGHTER OR POLICE OFFICER DURING THE
23 LEGALLY REQUIRED OR AUTHORIZED DUTIES OF THE PROFESSION, WHICH
24 DUTIES WERE PERFORMED DURING AN EMERGENCY SITUATION AND WHICH DUTIES
25 SUBSTANTIALLY INCREASED THE LIKELIHOOD OF THE RESULTING DEATH OR
26 INJURY, AND ALL OF THE FOLLOWING ARE TRUE:

27 (i) THE NEGLIGENT PERSON IS NOT SOMEONE WHOSE ACT OR OMISSION

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1 RESULTED IN THE FIREFIGHTER'S OR POLICE OFFICER'S PRESENCE AT THE
2 PLACE WHERE THE INJURY OCCURRED; OR THE PERSON IS SOMEONE WHOSE ACT
3 OR OMISSION RESULTED IN THE FIREFIGHTER'S OR POLICE OFFICER'S
4 PRESENCE AT THE PLACE WHERE THE INJURY OCCURRED AND THE ACTION IS
5 BASED ON AN ACT BY THAT PERSON THAT OCCURRED AFTER THE FIREFIGHTER
6 OR POLICE OFFICER ARRIVED AT THE PLACE WHERE THE INJURY OCCURRED.

7 (ii) THE NEGLIGENT PERSON IS NOT SOMEONE FROM WHOM THE
8 FIREFIGHTER OR POLICE OFFICER HAD SOUGHT OR OBTAINED ASSISTANCE OR
9 OWNER OR TENANT OF THE PROPERTY FROM WHERE THE FIREFIGHTER OR POLICE
10 IS NOT AN OFFICER SOUGHT OR OBTAINED ASSISTANCE.

11 (iii) THE NEGLIGENT PERSON IS NOT SOMEONE WHO IS AN OWNER OR
12 TENANT OF THE PROPERTY THAT THE FIREFIGHTER OR POLICE OFFICER WAS ON
13 IN HIS OR HER OFFICIAL CAPACITY; OR THE PERSON IS SOMEONE WHO IS AN
14 OWNER OR TENANT OF THE PROPERTY THAT THE FIREFIGHTER OR POLICE
15 OFFICER WAS ON IN HIS OR HER OFFICIAL CAPACITY AND THE ACTION IS
16 BASED ON AN ACT BY THAT PERSON THAT OCCURRED AFTER THE FIREFIGHTER
17 OR POLICE OFFICER ARRIVED AT THE PLACE WHERE THE INJURY OCCURRED.

18 (C) AN INJURY OR RESULTING DEATH THAT IS A BASIS FOR THE CAUSE
19 OF ACTION WAS CAUSED BY A PERSON'S ORDINARY NEGLIGENCE AND ALL OF
20 THE FOLLOWING ARE TRUE:

21 (i) THE NEGLIGENT PERSON IS NOT SOMEONE WHOSE ACT OR OMISSION
22 RESULTED IN THE FIREFIGHTER'S OR POLICE OFFICER'S PRESENCE AT THE
23 PLACE WHERE THE INJURY OCCURRED; OR THE PERSON IS SOMEONE WHOSE ACT
24 OR OMISSION RESULTED IN THE FIREFIGHTER'S OR POLICE OFFICER'S
25 PRESENCE AT THE PLACE WHERE THE INJURY OCCURRED AND THE ACTION IS
26 BASED ON AN ACT BY THAT PERSON THAT OCCURRED AFTER THE FIREFIGHTER

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1 OR POLICE OFFICER ARRIVED AT THE PLACE WHERE THE INJURY OCCURRED.

2 (ii) THE NEGLIGENT PERSON IS NOT SOMEONE FROM WHOM THE
3 FIREFIGHTER OR POLICE OFFICER HAD SOUGHT OR OBTAINED ASSISTANCE OR
4 IS NOT AN OWNER OR TENANT OF THE PROPERTY FROM WHERE THE FIREFIGHTER
5 OR POLICE OFFICER SOUGHT OR OBTAINED ASSISTANCE.

6 (iii) THE NEGLIGENT PERSON IS NOT SOMEONE WHO IS AN OWNER OR
7 TENANT OF THE PROPERTY THAT THE FIREFIGHTER OR POLICE OFFICER WAS ON
8 IN HIS OR HER OFFICIAL CAPACITY; OR THE PERSON IS SOMEONE WHO IS AN
9 OWNER OR TENANT OF THE PROPERTY THAT THE FIREFIGHTER OR POLICE
10 OFFICER WAS ON IN HIS OR HER OFFICIAL CAPACITY AND THE ACTION IS
11 BASED ON AN ACT BY THAT PERSON THAT OCCURRED AFTER THE FIREFIGHTER
12 OR POLICE OFFICER ARRIVED AT THE PLACE WHERE THE INJURY OCCURRED.

13 (iv) THE FIREFIGHTER OR POLICE OFFICER WAS ENGAGED IN 1 OR MORE
14 OF THE FOLLOWING:

15 (A) OPERATING, OR RIDING IN OR ON, A MOTOR VEHICLE THAT IS
16 BEING OPERATED IN CONFORMITY WITH THE LAWS APPLICABLE TO THE GENERAL
17 PUBLIC.

18 (B) AN ACT INVOLVING THE LEGALLY REQUIRED OR AUTHORIZED DUTIES
19 OF THE PROFESSION THAT DID NOT SUBSTANTIALLY INCREASE THE LIKELIHOOD
20 OF THE RESULTING DEATH OR INJURY. THE COURT SHALL NOT CONSIDER THE
21 FIREFIGHTER OR POLICE OFFICER TO HAVE BEEN ENGAGED IN AN ACT THAT
22 SUBSTANTIALLY INCREASED THE LIKELIHOOD OF DEATH OR INJURY IF THE
23 INJURY OCCURRED WITHIN A HIGHWAY RIGHT-OF-WAY, IF THERE WAS
24 EMERGENCY LIGHTING ACTIVATED AT THE SCENE, AND IF THE FIREFIGHTER OR
25 POLICE OFFICER WAS ENGAGED IN EMERGENCY MEDICAL SERVICES, ACCESSING
26 A FIRE HYDRANT, TRAFFIC CONTROL, MOTORIST ASSISTANCE, OR A TRAFFIC
27 STOP FOR A POSSIBLE VIOLATION OF LAW.

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- 1 (2) THIS SECTION SHALL NOT BE CONSTRUED TO AFFECT A RIGHT,
2 REMEDY, PROCEDURE, OR LIMITATION OF ACTION THAT IS OTHERWISE
3 PROVIDED BY STATUTE OR COMMON LAW.
- 4 (3) AS USED IN THIS SECTION:
- 5 (A) "GROSSLY NEGLIGENT" MEANS CONDUCT SO RECKLESS AS TO
6 DEMONSTRATE A SUBSTANTIAL LACK OF CONCERN FOR WHETHER INJURY
7 RESULTS.
- 8 (B) "PERSON" MEANS AN INDIVIDUAL OR A PARTNERSHIP, CORPORATION,
9 LIMITED LIABILITY COMPANY, ASSOCIATION, OR OTHER LEGAL ENTITY.
- 10 (C) "PRODUCT LIABILITY ACTION" MEANS THAT TERM AS DEFINED IN
11 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.]