

**SUBSTITUTE FOR
HOUSE BILL NO. 5063**

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 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,"

by amending section 7 (MCL 691.1407), as amended by 1999 PA 241.

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
2 from tort liability as it existed before July 1, 1965, which
3 immunity is affirmed.

4 (2) Except as otherwise provided in this section, and with-
5 out regard to the discretionary or ministerial nature of the con-
6 duct in question, each officer and employee of a governmental
7 agency, each volunteer acting on behalf of a governmental agency,
8 and each 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
11 by the officer, employee, or member while in the course of
12 employment or service or caused by the volunteer while acting on
13 behalf of a 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
16 or 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 con-
20 duct does not amount to gross negligence that is ~~the~~ A proxi-
21 mate cause of the injury or damage. As used in this subdivision,
22 "gross negligence" means conduct so reckless as to demonstrate a
23 substantial lack of concern for whether an injury results.

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

26 (4) Except as provided in section 7a, this act does not
27 grant immunity to a governmental agency OR AN EMPLOYEE OR AGENT

1 OF A GOVERNMENTAL AGENCY with respect to ~~the ownership or~~
2 ~~operation of a hospital or county medical care facility or to the~~
3 ~~agents or employees of such hospital or county medical care~~
4 ~~facility. As used in this subsection:~~ PROVIDING MEDICAL CARE OR
5 TREATMENT TO A PATIENT, EXCEPT MEDICAL CARE OR TREATMENT PROVIDED
6 TO A PATIENT IN A HOSPITAL OWNED OR OPERATED BY THE DEPARTMENT OF
7 COMMUNITY HEALTH OR A HOSPITAL OWNED OR OPERATED BY THE DEPART-
8 MENT OF CORRECTIONS.

9 ~~(a) "County medical care facility" means that term as~~
10 ~~defined in section 20104 of the public health code, 1978 PA 368,~~
11 ~~MCL 333.20104.~~

12 ~~(b) "Hospital" means a facility offering inpatient, over=~~
13 ~~night care, and services for observation, diagnosis, and active~~
14 ~~treatment of an individual with a medical, surgical, obstetric,~~
15 ~~chronic, or rehabilitative condition requiring the daily direc=~~
16 ~~tion or supervision of a physician. The term does not include a~~
17 ~~hospital owned or operated by the department of community health~~
18 ~~or a hospital operated by the department of corrections.~~

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

24 (6) A guardian ad litem is immune from civil liability for
25 an injury to a person or damage to property if he or she is
26 acting within the scope of his or her authority as guardian ad

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1 litem. This subsection applies to actions filed before, on, or
2 after May 1, 1996.

3 Enacting section 1. This amendatory act applies only to a
4 cause of action arising on or after the effective date of this
5 amendatory act.

6 Enacting section 2. This act does not take effect unless
7 House Bill No. 5803 of the 90th Legislature is enacted into law.