

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4469

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,"

(MCL 691.1401 to 691.1415) by adding section 7b; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7B. (1) EXCEPT AS PROVIDED IN SECTION 13 AND THIS
2 SECTION, A MUNICIPAL CORPORATION ENGAGED IN THE EXERCISE OR
3 DISCHARGE OF A GOVERNMENTAL FUNCTION IS IMMUNE FROM LIABILITY IN

HB 4469, As Passed Senate, December 8, 1999

House Bill No. 4469

2

1 AN ACTION TO RECOVER DAMAGES RESULTING DIRECTLY OR INDIRECTLY
2 FROM A COMPUTER DATE FAILURE, INCLUDING BUT NOT LIMITED TO AN
3 ACTION BASED ON AN ALLEGED FAILURE TO DETECT, DISCLOSE, PREVENT,
4 REPORT ON, OR REMEDIATE A COMPUTER DATE FAILURE OR AN ACTION
5 BASED ON SECTION 2, 3, 5, 6, OR 7.

6 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AND WITH-
7 OUT REGARD TO THE DISCRETIONARY OR MINISTERIAL NATURE OF THE CON-
8 DUCT IN QUESTION, EACH MUNICIPAL CORPORATION OFFICER AND EMPLOY-
9 EE, EACH VOLUNTEER ACTING ON BEHALF OF A MUNICIPAL CORPORATION,
10 AND EACH MEMBER OF A MUNICIPAL CORPORATION BOARD, COUNCIL, COM-
11 MISSION, OR STATUTORILY CREATED TASK FORCE IS IMMUNE FROM LIABIL-
12 ITY IN AN ACTION TO RECOVER DAMAGES RESULTING DIRECTLY OR INDI-
13 RECTLY FROM A COMPUTER DATE FAILURE, INCLUDING BUT NOT LIMITED TO
14 AN ACTION BASED ON AN ALLEGED FAILURE TO DETECT, DISCLOSE, PRE-
15 VENT, REPORT ON, OR REMEDIATE A COMPUTER DATE FAILURE OR AN
16 ACTION BASED ON SECTION 2, 3, 5, 6, OR 7 IF ALL OF THE FOLLOWING
17 ARE MET:

18 (A) THE DAMAGE IS CAUSED BY THE OFFICER, EMPLOYEE, OR MEMBER
19 WHILE IN THE COURSE OF EMPLOYMENT OR SERVICE OR BY THE VOLUNTEER
20 WHILE ACTING ON BEHALF OF THE MUNICIPAL CORPORATION.

21 (B) THE OFFICER, EMPLOYEE, MEMBER, OR VOLUNTEER IS ACTING OR
22 REASONABLY BELIEVES HE OR SHE IS ACTING WITHIN THE SCOPE OF HIS
23 OR HER AUTHORITY.

24 (C) THE MUNICIPAL CORPORATION IS ENGAGED IN THE EXERCISE OR
25 DISCHARGE OF A GOVERNMENTAL FUNCTION.

26 (D) THE OFFICER'S, EMPLOYEE'S, MEMBER'S, OR VOLUNTEER'S
27 CONDUCT DOES NOT AMOUNT TO GROSS NEGLIGENCE THAT IS THE PROXIMATE

HB 4469, As Passed Senate, December 8, 1999

House Bill No. 4469

3

1 CAUSE OF THE INJURY OR DAMAGE. AS USED IN THIS SUBDIVISION,
2 "GROSS NEGLIGENCE" MEANS CONDUCT SO RECKLESS AS TO DEMONSTRATE A
3 SUBSTANTIAL LACK OF CONCERN FOR WHETHER AN INJURY OR SUBSTANTIAL
4 DAMAGE RESULTS.

5 (3) THIS SECTION SHALL NOT BE CONSTRUED AS MODIFYING OR
6 RESTRICTING THE IMMUNITY OF A GOVERNMENTAL AGENCY OTHERWISE PRO-
7 VIDED IN THIS ACT. THIS SECTION DOES NOT LIMIT EITHER OF THE
8 FOLLOWING:

9 (A) THE AUTHORITY OF A MUNICIPAL CORPORATION TO ENTER INTO
10 AN AGREEMENT THAT WAIVES OR LIMITS ITS IMMUNITY DESCRIBED IN SUB-
11 SECTION (1) AND THAT CONTAINS PROVISIONS THE MUNICIPAL CORPORA-
12 TION FINDS APPROPRIATE ON THE ISSUE OF ITS LIABILITY, DAMAGES, OR
13 BOTH FOR COMPUTER DATA FAILURE.

14 (B) THE AUTHORITY OF A GOVERNMENTAL AGENCY TO ENTER INTO AN
15 AGREEMENT THAT WAIVES OR LIMITS ITS IMMUNITY DESCRIBED IN SECTION
16 7A(3) AND THAT CONTAINS PROVISIONS THE GOVERNMENTAL AGENCY FINDS
17 APPROPRIATE ON THE ISSUE OF ITS LIABILITY, DAMAGES, OR BOTH FOR
18 COMPUTER DATA FAILURE.

19 (4) THIS SECTION DOES NOT APPLY TO AN ACTION TO RECOVER DAM-
20 AGES FOR A WRONGFUL DEATH OR INJURY TO A PERSON RESULTING FROM A
21 COMPUTER DATA FAILURE.

22 (5) AS USED IN THIS SECTION:

23 (A) "COMPUTER" MEANS A HIGH-SPEED DATA PROCESSING DEVICE
24 THAT PERFORMS LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS BY THE
25 MANIPULATIONS OF ELECTRONIC OR MAGNETIC IMPULSES AND INCLUDES ALL
26 INPUT, OUTPUT, PROCESSING, STORAGE, OR COMMUNICATION FACILITIES
27 THAT ARE CONNECTED OR RELATED TO THE DEVICE.

HB 4469, As Passed Senate, December 8, 1999

House Bill No. 4469

4

1 (B) "COMPUTER DATE FAILURE" MEANS A MALFUNCTION, INCLUDING,
2 BUT NOT LIMITED TO, THE MALFUNCTION OF AN ELECTRONIC OR MECHANI-
3 CAL DEVICE OR THE INABILITY OF A COMPUTER, A COMPUTER NETWORK, A
4 COMPUTER PROGRAM, COMPUTER SOFTWARE, AN EMBEDDED CHIP, OR A COM-
5 PUTER SYSTEM TO ACCURATELY STORE, PROCESS, RECEIVE, OR TRANSMIT
6 DATA, THAT IS CAUSED DIRECTLY OR INDIRECTLY BY THE FAILURE OF A
7 COMPUTER, A COMPUTER PROGRAM, COMPUTER SOFTWARE, NETWORK, A COM-
8 PUTER AN EMBEDDED CHIP, OR A COMPUTER SYSTEM TO ACCURATELY OR
9 PROPERLY RECOGNIZE, CALCULATE, DISPLAY, SORT, OR OTHERWISE PRO-
10 CESS DATES OR TIMES IN THE YEARS 1999 AND 2000 AND BEYOND.

11 (C) "COMPUTER NETWORK" MEANS AN INTERCONNECTION OF 2 OR MORE
12 COMPUTERS OR COMPUTER SYSTEMS BY SATELLITE, MICROWAVE, LINE,
13 CABLE, WIRING, OR OTHER COMMUNICATION MEDIUM WITH THE CAPABILITY
14 TO TRANSMIT INFORMATION AMONG THE COMPUTERS OR COMPUTER SYSTEMS.

15 (D) "COMPUTER PROGRAM" MEANS AN ORDERED SET OF DATA-CODED
16 INSTRUCTIONS OR STATEMENTS THAT WHEN EXECUTED BY A COMPUTER CAUSE
17 THE COMPUTER SYSTEM TO PROCESS DATA OR PERFORM SPECIFIC
18 FUNCTIONS.

19 (E) "COMPUTER SOFTWARE" MEANS A SET OF COMPUTER PROGRAMS,
20 PROCEDURES, AND ASSOCIATED DOCUMENTATION RELATED TO THE OPERATION
21 OF A COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK.

22 (F) "COMPUTER SYSTEM" MEANS A COMBINATION OF A COMPUTER OR A
23 COMPUTER NETWORK WITH THE DOCUMENTATION, COMPUTER SOFTWARE, OR
24 PHYSICAL FACILITIES SUPPORTING THE COMPUTER OR COMPUTER NETWORK.

25 (G) "EMBEDDED CHIP" MEANS A SINGLE OR MULTIPLE MICROPROCES-
26 SOR CHIP THAT OPERATES IN CONJUNCTION WITH SOFTWARE, INCLUDING
27 SOFTWARE ON THE CHIP ITSELF, AND THAT IN SOME WAY CONTROLS A

HB 4469, As Passed Senate, December 8, 1999

House Bill No. 4469

5

1 DEVICE OR EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, A COMPUTER OR
2 OTHER ELECTRONIC OR MECHANICAL DEVICE.

3 (6) THIS SECTION IS REPEALED JANUARY 1, 2003.

4 Enacting section 1. This amendatory act does not take
5 effect unless House Bill No. 4587 and House Bill No. 4588 of the
6 90th Legislature are enacted into law.