

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 4588

(As passed the House, October 21, 1999)

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 1996 PA 143, and by adding section 7a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) Except as otherwise provided in this act, ~~all~~
2 ~~governmental agencies shall be~~ A GOVERNMENTAL AGENCY IS immune
3 from tort liability ~~in all cases wherein~~ IF the ~~government~~

HB 4588, As Passed Senate, December 8, 1999

House Bill No. 4588

2

1 GOVERNMENTAL agency is engaged in the exercise or discharge of a
2 governmental function. Except as otherwise provided in this act,
3 this act ~~shall not be construed as modifying or restricting~~
4 DOES NOT MODIFY OR RESTRICT the immunity of the state from tort
5 liability as it existed before July 1, 1965, which immunity is
6 affirmed.

7 (2) Except as otherwise provided in this section, and with-
8 out regard to the discretionary or ministerial nature of the con-
9 duct in question, each officer and employee of a governmental
10 agency, each volunteer acting on behalf of a governmental agency,
11 and each member of a board, council, commission, or statutorily
12 created task force of a governmental agency ~~shall be~~ IS immune
13 from tort liability for ~~injuries to persons or damages~~ AN
14 INJURY TO A PERSON OR DAMAGE to property caused by the officer,
15 employee, or member while in the course of employment or service
16 or CAUSED BY THE volunteer while acting on behalf of a governmen-
17 tal agency if all of the following are met:

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

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

23 (c) The officer's, employee's, member's, or volunteer's con-
24 duct does not amount to gross negligence that is the proximate
25 cause of the injury or damage. As used in this subdivision,
26 "gross negligence" means conduct so reckless as to demonstrate a
27 substantial lack of concern for whether an injury results.

HB 4588, As Passed Senate, December 8, 1999

House Bill No. 4588

3

1 (3) Subsection (2) ~~shall~~ DOES not ~~be construed as~~
2 ~~altering~~ ALTER the law of intentional torts as it existed before
3 July 7, 1986.

4 (4) ~~This~~ EXCEPT AS PROVIDED IN SECTION 7A, THIS act does
5 not grant immunity to a governmental agency with respect to the
6 ownership or operation of a hospital or county medical care
7 facility or to the agents or employees of such hospital or county
8 medical care facility. As used in this subsection:

9 (a) "County medical care facility" means that term as
10 defined in section 20104 of the public health code, ~~Act No. 368~~
11 ~~of the Public Acts of 1978, being section 333.20104 of the~~
12 ~~Michigan Compiled Laws~~ 1978 PA 368, MCL 333.20104.

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

21 (5) ~~Judges, legislators~~ A JUDGE, A LEGISLATOR, and the
22 elective or highest appointive executive ~~officials~~ OFFICIAL of
23 all levels of government are immune from tort liability for inju-
24 ries to persons or damages to property ~~whenever they are~~ IF HE
25 OR SHE IS acting within the scope of ~~their~~ HIS OR HER judicial,
26 legislative, or executive authority.

HB 4588, As Passed Senate, December 8, 1999

House Bill No. 4588

4

1 (6) A guardian ad litem is immune from civil liability for
2 ~~injuries to persons or damages~~ AN INJURY TO A PERSON OR DAMAGE
3 to property ~~whenever~~ IF he or she is acting within the scope of
4 his or her authority as guardian ad litem. This subsection
5 applies to actions filed before, on, or after ~~the effective date~~
6 ~~of the amendatory act that added this subsection~~ MAY 1, 1996.

7 SEC. 7A. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION
8 AND SECTION 13, A POLITICAL SUBDIVISION OTHER THAN A MUNICIPAL
9 CORPORATION ENGAGED IN THE EXERCISE OR DISCHARGE OF A GOVERNMEN-
10 TAL FUNCTION IS IMMUNE FROM LIABILITY IN AN ACTION TO RECOVER
11 DAMAGES RESULTING DIRECTLY OR INDIRECTLY FROM A COMPUTER DATE
12 FAILURE, INCLUDING BUT NOT LIMITED TO AN ACTION BASED ON AN
13 ALLEGED FAILURE TO DETECT, DISCLOSE, PREVENT, REPORT ON, OR REME-
14 DIATE A COMPUTER DATE FAILURE OR AN ACTION BASED ON SECTION 2, 3,
15 5, 6, OR 7.

16 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AND WITH-
17 OUT REGARD TO THE DISCRETIONARY OR MINISTERIAL NATURE OF THE CON-
18 DUCT IN QUESTION, EACH OFFICER AND EMPLOYEE OF A POLITICAL SUBDI-
19 VISION OTHER THAN A MUNICIPAL CORPORATION, EACH VOLUNTEER ACTING
20 ON BEHALF OF A POLITICAL SUBDIVISION OTHER THAN A MUNICIPAL COR-
21 PORATION, AND EACH MEMBER OF A BOARD, COUNCIL, COMMISSION, OR
22 STATUTORILY CREATED TASK FORCE OF A POLITICAL SUBDIVISION OTHER
23 THAN A MUNICIPAL CORPORATION IS IMMUNE FROM LIABILITY IN AN
24 ACTION TO RECOVER DAMAGES RESULTING DIRECTLY OR INDIRECTLY FROM A
25 COMPUTER DATE FAILURE, INCLUDING BUT NOT LIMITED TO AN ACTION
26 BASED ON AN ALLEGED FAILURE TO DETECT, DISCLOSE, PREVENT, REPORT

HB 4588, As Passed Senate, December 8, 1999

House Bill No. 4588

5

1 ON, OR REMEDIATE A COMPUTER DATE FAILURE OR AN ACTION BASED ON
2 SECTION 2, 3, 5, 6, OR 7 IF ALL OF THE FOLLOWING ARE MET:

3 (A) THE INJURY OR DAMAGE IS CAUSED BY THE OFFICER, EMPLOYEE,
4 OR MEMBER WHILE IN THE COURSE OF EMPLOYMENT OR SERVICE OR BY THE
5 VOLUNTEER WHILE ACTING ON BEHALF OF THE POLITICAL SUBDIVISION
6 OTHER THAN A MUNICIPAL CORPORATION.

7 (B) THE OFFICER, EMPLOYEE, MEMBER, OR VOLUNTEER IS ACTING OR
8 REASONABLY BELIEVES HE OR SHE IS ACTING WITHIN THE SCOPE OF HIS
9 OR HER AUTHORITY.

10 (C) THE POLITICAL SUBDIVISION OTHER THAN A MUNICIPAL CORPO-
11 RATION IS ENGAGED IN THE EXERCISE OR DISCHARGE OF A GOVERNMENTAL
12 FUNCTION.

13 (D) THE OFFICER'S, EMPLOYEE'S, MEMBER'S, OR VOLUNTEER'S CON-
14 DUCT DOES NOT AMOUNT TO GROSS NEGLIGENCE THAT IS THE PROXIMATE
15 CAUSE OF THE INJURY OR DAMAGE. AS USED IN THIS SUBDIVISION,
16 "GROSS NEGLIGENCE" MEANS CONDUCT SO RECKLESS AS TO DEMONSTRATE A
17 SUBSTANTIAL LACK OF CONCERN FOR WHETHER AN INJURY OR SUBSTANTIAL
18 DAMAGE RESULTS.

19 (3) EXCEPT AS PROVIDED IN SUBSECTION (6), A GOVERNMENTAL
20 AGENCY IS IMMUNE FROM LIABILITY IN AN ACTION TO RECOVER DAMAGES
21 WITH RESPECT TO THE OWNERSHIP OR OPERATION OF A HOSPITAL OR
22 COUNTY MEDICAL FACILITY, AS THOSE TERMS ARE DEFINED IN SECTION
23 7(4), RESULTING DIRECTLY OR INDIRECTLY FROM A COMPUTER DATE FAIL-
24 URE, INCLUDING BUT NOT LIMITED TO AN ACTION BASED ON AN ALLEGED
25 FAILURE TO DETECT, DISCLOSE, PREVENT, REPORT ON, OR REMEDIATE A
26 COMPUTER DATE FAILURE OR AN ACTION BASED ON ANOTHER SECTION OF
27 THIS ACT.

HB 4588, As Passed Senate, December 8, 1999

House Bill No. 4588

6

1 (4) EXCEPT AS PROVIDED IN SUBSECTION (6), WITHOUT REGARD TO
2 THE DISCRETIONARY OR MINISTERIAL NATURE OF THE CONDUCT IN QUES-
3 TION, EACH GOVERNMENTAL AGENCY OFFICER AND EMPLOYEE, EACH VOLUN-
4 TEER ACTING ON BEHALF OF A GOVERNMENTAL AGENCY, AND EACH MEMBER
5 OF A GOVERNMENTAL AGENCY BOARD, COUNCIL, COMMISSION, OR STATUTO-
6 RILY CREATED TASK FORCE IS IMMUNE FROM LIABILITY IN AN ACTION TO
7 RECOVER DAMAGES WITH RESPECT TO THE OWNERSHIP OR OPERATION OF A
8 HOSPITAL OR COUNTY MEDICAL FACILITY, AS THOSE TERMS ARE DEFINED
9 IN SECTION 7(4), RESULTING DIRECTLY OR INDIRECTLY FROM A COMPUTER
10 DATE FAILURE, INCLUDING BUT NOT LIMITED TO AN ACTION BASED ON AN
11 ALLEGED FAILURE TO DETECT, DISCLOSE, PREVENT, REPORT ON, OR REME-
12 DIATE A COMPUTER DATE FAILURE OR AN ACTION BASED ON A SECTION OF
13 THIS ACT IF ALL OF THE FOLLOWING ARE MET:

14 (A) THE DAMAGE IS CAUSED BY THE OFFICER, EMPLOYEE, OR MEMBER
15 WHILE IN THE COURSE OF EMPLOYMENT OR SERVICE OR BY THE VOLUNTEER
16 WHILE ACTING ON BEHALF OF THE GOVERNMENTAL AGENCY.

17 (B) THE OFFICER, EMPLOYEE, MEMBER, OR VOLUNTEER IS ACTING OR
18 REASONABLY BELIEVES HE OR SHE IS ACTING WITHIN THE SCOPE OF HIS
19 OR HER AUTHORITY.

20 (C) THE OFFICER'S, EMPLOYEE'S, MEMBER'S, OR VOLUNTEER'S CON-
21 DUCT DOES NOT AMOUNT TO GROSS NEGLIGENCE THAT IS THE PROXIMATE
22 CAUSE OF THE INJURY OR DAMAGE. AS USED IN THIS SUBDIVISION,
23 "GROSS NEGLIGENCE" MEANS CONDUCT SO RECKLESS AS TO DEMONSTRATE A
24 SUBSTANTIAL LACK OF CONCERN FOR WHETHER AN INJURY OR SUBSTANTIAL
25 DAMAGE RESULTS.

26 (5) THIS SECTION SHALL NOT BE CONSTRUED AS MODIFYING OR
27 RESTRICTING THE IMMUNITY OF A GOVERNMENTAL AGENCY OTHERWISE

HB 4588, As Passed Senate, December 8, 1999

House Bill No. 4588 as amended December 7, 1999

7

1 PROVIDED IN THIS ACT. THIS SECTION DOES NOT LIMIT EITHER OF THE
2 FOLLOWING:

3 (A) THE AUTHORITY OF A POLITICAL SUBDIVISION OTHER THAN A
4 MUNICIPAL CORPORATION TO ENTER INTO AN AGREEMENT THAT WAIVES OR
5 LIMITS ITS IMMUNITY DESCRIBED IN SUBSECTION (1) AND THAT CONTAINS
6 PROVISIONS THE POLITICAL SUBDIVISION OTHER THAN A MUNICIPAL COR-
7 PORATION FINDS APPROPRIATE ON THE ISSUE OF ITS LIABILITY, DAM-
8 AGES, OR BOTH FOR COMPUTER DATE FAILURE.

9 (B) THE AUTHORITY OF A GOVERNMENTAL AGENCY TO ENTER INTO AN
10 AGREEMENT THAT WAIVES OR LIMITS ITS IMMUNITY DESCRIBED IN SUBSEC-
11 TION (3) AND THAT CONTAINS PROVISIONS THE GOVERNMENTAL AGENCY
12 FINDS APPROPRIATE ON THE ISSUE OF ITS LIABILITY, DAMAGES, OR BOTH
13 FOR COMPUTER DATE FAILURE.

14 (6) THIS SECTION DOES NOT APPLY TO AN ACTION TO RECOVER DAM-
15 AGES FOR A WRONGFUL DEATH OR INJURY TO A PERSON RESULTING
16 FROM A COMPUTER DATE FAILURE.

17 (7) FOR PURPOSES OF THIS SECTION, THE TERMS "POLITICAL
18 SUBDIVISION" AND "GOVERNMENTAL AGENCY" INCLUDE A MUNICIPAL HEALTH
19 FACILITIES CORPORATION INCORPORATED UNDER THE MUNICIPAL HEALTH
20 FACILITIES CORPORATIONS ACT, 1987 PA 230, MCL 331.1101 TO
21 331.1507.

22 (8) 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 4588, As Passed Senate, December 8, 1999

House Bill No. 4588

8

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 4588, As Passed Senate, December 8, 1999

House Bill No. 4588 as amended October 21, 1999

9

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

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

4 Enacting section 1. This amendatory act does not take
5 effect unless House Bill No. 4469 and House Bill No. 4587 of the
90th Legislature are

6 enacted into law.