

HOUSE BILL No. 4469

April 14, 1999, Introduced by Reps. DeHart and Schermesser and referred to the Committee on Family and Civil Law.

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 1 (MCL 691.1401), as amended by 1986 PA 175, and by adding section 7a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. As used in this act:
- 2 (A) "COMPUTER" MEANS A HIGH-SPEED DATA PROCESSING DEVICE
- 3 THAT PERFORMS LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS BY THE

1 MANIPULATIONS OF ELECTRONIC OR MAGNETIC IMPULSES AND INCLUDES ALL
2 INPUT, OUTPUT, PROCESSING, STORAGE, OR COMMUNICATION FACILITIES
3 THAT ARE CONNECTED OR RELATED TO THE DEVICE.

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

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

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

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

25 (F) "COMPUTER SYSTEM" MEANS A COMBINATION OF A COMPUTER OR A
26 COMPUTER NETWORK WITH THE DOCUMENTATION, COMPUTER SOFTWARE, OR
27 PHYSICAL FACILITIES SUPPORTING THE COMPUTER OR COMPUTER NETWORK.

1 (G) "EMBEDDED CHIP" MEANS A SINGLE OR MULTIPLE
 2 MICROPROCESSOR CHIP THAT OPERATES IN CONJUNCTION WITH SOFTWARE,
 3 INCLUDING SOFTWARE ON THE CHIP ITSELF, AND THAT IN SOME WAY CON-
 4 TROLS A DEVICE OR EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, A
 5 COMPUTER OR OTHER ELECTRONIC OR MECHANICAL DEVICE.

6 (H) ~~-(a)-~~ "Municipal corporation" means ~~any~~ A city, vil-
 7 lage, township, or charter township, or ~~any~~ A combination
 8 ~~thereof~~ OF THESE, when acting jointly.

9 (I) ~~-(b)-~~ "Political subdivision" means ~~any~~ A municipal
 10 corporation, county, county road commission, township, charter
 11 township, school district, community college district, port dis-
 12 trict, ~~or~~ metropolitan district, OR transportation authority,
 13 or ~~any~~ A combination ~~thereof~~, OF THESE when acting jointly;
 14 ~~, and any~~ A district or authority authorized by law or formed
 15 by 1 or more political subdivisions; ~~, and any~~ OR AN agency,
 16 department, court, board, or council of a political subdivision.

17 (J) ~~-(c)-~~ "State" means the state of Michigan and its agen-
 18 cies, departments, commissions, courts, boards, councils, AND
 19 statutorily created task forces ~~, and shall include~~ INCLUDES
 20 every public university and college of the state ~~, whether~~
 21 established as a constitutional corporation or otherwise.

22 (K) ~~-(d)-~~ "Governmental agency" means the state, A political
 23 ~~subdivisions, and~~ SUBDIVISION, OR A municipal ~~corporations~~
 24 CORPORATION.

25 (l) ~~-(e)-~~ "Highway" means ~~every~~ A public highway, road,
 26 and street ~~which~~ THAT is open for public travel and ~~shall~~
 27 ~~include~~ INCLUDES bridges, sidewalks, crosswalks, and culverts on

1 ~~any~~ A highway. The term highway does not include alleys,
2 trees, and utility poles.

3 (M) ~~(f)~~ "Governmental function" is an activity ~~which~~
4 THAT is expressly or impliedly mandated or authorized by consti-
5 tution, statute, local charter or ordinance, or other law.

6 (N) ~~(g)~~ "Volunteer" means an individual who is specifi-
7 cally designated as such and who is acting solely on behalf of a
8 governmental agency.

9 SEC. 7A. (1) EXCEPT AS PROVIDED IN SECTION 13, A MUNICIPAL
10 CORPORATION ENGAGED IN THE EXERCISE OR DISCHARGE OF A GOVERNMEN-
11 TAL FUNCTION IS IMMUNE FROM LIABILITY IN AN ACTION TO RECOVER
12 DAMAGES RESULTING DIRECTLY OR INDIRECTLY FROM A COMPUTER DATE
13 FAILURE, INCLUDING BUT NOT LIMITED TO AN ACTION BASED ON AN
14 ALLEGED FAILURE TO DETECT, DISCLOSE, PREVENT, REPORT ON, OR REME-
15 DIATE A COMPUTER DATE FAILURE OR AN ACTION BASED ON SECTION 2, 3,
16 5, 6, OR 7.

17 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AND WITH-
18 OUT REGARD TO THE DISCRETIONARY OR MINISTERIAL NATURE OF THE CON-
19 DUCT IN QUESTION, EACH MUNICIPAL CORPORATION OFFICER AND EMPLOY-
20 EE, EACH VOLUNTEER ACTING ON BEHALF OF A MUNICIPAL CORPORATION,
21 AND EACH MEMBER OF A MUNICIPAL CORPORATION BOARD, COUNCIL, COM-
22 MISSION, OR STATUTORILY CREATED TASK FORCE IS IMMUNE FROM LIABIL-
23 ITY IN AN ACTION TO RECOVER DAMAGES RESULTING DIRECTLY OR INDI-
24 RECTLY FROM A COMPUTER DATE FAILURE, INCLUDING BUT NOT LIMITED TO
25 AN ACTION BASED ON AN ALLEGED FAILURE TO DETECT, DISCLOSE, PRE-
26 VENT, REPORT ON, OR REMEDIATE A COMPUTER DATE FAILURE OR AN

1 ACTION BASED ON SECTION 2, 3, 5, 6, OR 7 IF ALL OF THE FOLLOWING
2 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 MUNICIPAL CORPORATION.

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

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

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

17 (3) THIS SECTION DOES NOT GRANT IMMUNITY TO A MUNICIPAL COR-
18 PORATION OR AN EMPLOYEE OR AGENT OF A MUNICIPAL CORPORATION WITH
19 RESPECT TO PROVIDING MEDICAL CARE OR TREATMENT TO A PATIENT,
20 EXCEPT MEDICAL CARE OR TREATMENT PROVIDED TO A PATIENT IN A HOS-
21 PITAL OWNED OR OPERATED BY THE DEPARTMENT OF COMMUNITY HEALTH OR
22 A HOSPITAL OWNED OR OPERATED BY THE DEPARTMENT OF CORRECTIONS.

23 (4) THIS SECTION SHALL NOT BE CONSTRUED AS MODIFYING OR
24 RESTRICTING THE IMMUNITY OF A GOVERNMENTAL AGENCY OTHERWISE PRO-
25 VIDED IN THIS ACT. THIS SECTION DOES NOT LIMIT THE ABILITY OF A
26 MUNICIPAL CORPORATION TO ENTER INTO AN AGREEMENT THAT WAIVES OR
27 LIMITS ITS IMMUNITY DESCRIBED IN SUBSECTION (1) AND CONTAINS

1 PROVISIONS IT FINDS APPROPRIATE ON THE ISSUE OF ITS LIABILITY,
2 DAMAGES, OR BOTH FOR COMPUTER DATE FAILURE.