

HOUSE BILL No. 4588

April 27, 1999, Introduced by Reps. Shulman, Kukuk, Tabor, Kuipers, Voorhees, Hart, Kowall, Raczkowski, Bisbee, Richner, LaSata and Gosselin 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 sections 1, 7, and 13 (MCL 691.1401, 691.1407, and 691.1413), sections 1 and 13 as amended by 1986 PA 175 and section 7 as amended by 1996 PA 143, and by adding section 7a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

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

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

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

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

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

1 (F) "COMPUTER SYSTEM" MEANS A COMBINATION OF A COMPUTER OR A
2 COMPUTER NETWORK WITH THE DOCUMENTATION, COMPUTER SOFTWARE, OR
3 PHYSICAL FACILITIES SUPPORTING THE COMPUTER OR COMPUTER NETWORK.

4 (G) "EMBEDDED CHIP" MEANS A SINGLE OR MULTIPLE MICROPROCES-
5 SOR CHIP THAT OPERATES IN CONJUNCTION WITH SOFTWARE, INCLUDING
6 SOFTWARE ON THE CHIP ITSELF, AND THAT IN SOME WAY CONTROLS A
7 DEVICE OR EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, A COMPUTER OR
8 OTHER ELECTRONIC OR MECHANICAL DEVICE.

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

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

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

25 (K) ~~(d)~~ "Governmental agency" means the state, A political
26 ~~subdivisions, and~~ SUBDIVISION, OR A municipal ~~corporations~~
27 CORPORATION.

1 (1) ~~(e)~~ "Highway" means ~~every~~ A public highway, road,
2 and street ~~which~~ THAT is open for public travel and ~~shall~~
3 ~~include~~ INCLUDES bridges, sidewalks, crosswalks, and culverts on
4 ~~any~~ A highway. The term highway does not include alleys,
5 trees, and utility poles.

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

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

12 Sec. 7. (1) Except as otherwise provided in this act, ~~all~~
13 ~~governmental agencies shall be~~ A GOVERNMENTAL AGENCY IS immune
14 from tort liability ~~in all cases wherein~~ IF the ~~government~~
15 GOVERNMENTAL agency is engaged in the exercise or discharge of a
16 governmental function. Except as otherwise provided in this act,
17 this act ~~shall not be construed as modifying or restricting~~
18 DOES NOT MODIFY OR RESTRICT the immunity of the state from tort
19 liability as it existed before July 1, 1965, which immunity is
20 affirmed.

21 (2) Except as otherwise provided in this section, and with-
22 out regard to the discretionary or ministerial nature of the con-
23 duct in question, each officer and employee of a governmental
24 agency, each volunteer acting on behalf of a governmental agency,
25 and each member of a board, council, commission, or statutorily
26 created task force of a governmental agency ~~shall be~~ IS immune
27 from tort liability for ~~injuries to persons or damages~~ AN

1 INJURY TO A PERSON OR DAMAGE to property caused by the officer,
2 employee, or member while in the course of employment or service
3 or CAUSED BY THE volunteer while acting on behalf of a governmen-
4 tal agency if all of the following are met:

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

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

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

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

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

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

1 (b) "Hospital" means a facility offering inpatient,
2 overnight care, and services for observation, diagnosis, and
3 active treatment of an individual with a medical, surgical,
4 obstetric, chronic, or rehabilitative condition requiring the
5 daily direction or supervision of a physician. The term does not
6 include a hospital owned or operated by the department of
7 ~~mental~~ COMMUNITY health or a hospital operated by the depart-
8 ment of corrections.

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

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

21 SEC. 7A. (1) EXCEPT AS PROVIDED IN SECTION 13 AND SUBSEC-
22 TION (3), A POLITICAL SUBDIVISION ENGAGED IN THE EXERCISE OR DIS-
23 CHARGE OF A GOVERNMENTAL FUNCTION 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

1 ON, OR REMEDIATE A COMPUTER DATE FAILURE OR AN ACTION BASED ON
2 SECTION 2, 3, 5, 6, OR 7.

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

15 (A) THE INJURY OR DAMAGE IS CAUSED BY THE OFFICER, EMPLOYEE,
16 OR MEMBER WHILE IN THE COURSE OF EMPLOYMENT OR SERVICE OR BY THE
17 VOLUNTEER WHILE ACTING ON BEHALF OF THE POLITICAL SUBDIVISION.

18 (B) 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 (C) THE POLITICAL SUBDIVISION IS ENGAGED IN THE EXERCISE OR
22 DISCHARGE OF A GOVERNMENTAL FUNCTION.

23 (D) 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

1 SUBSTANTIAL LACK OF CONCERN FOR WHETHER AN INJURY OR SUBSTANTIAL
2 DAMAGE RESULTS.

3 (3) A GOVERNMENTAL AGENCY IS IMMUNE FROM LIABILITY IN AN
4 ACTION TO RECOVER DAMAGES WITH RESPECT TO PROVIDING MEDICAL CARE
5 OR TREATMENT TO A PATIENT RESULTING DIRECTLY OR INDIRECTLY FROM A
6 COMPUTER DATE FAILURE, INCLUDING BUT NOT LIMITED TO AN ACTION
7 BASED ON AN ALLEGED FAILURE TO DETECT, DISCLOSE, PREVENT, REPORT
8 ON, OR REMEDIATE A COMPUTER DATE FAILURE OR AN ACTION BASED ON
9 ANOTHER SECTION OF THIS ACT.

10 (4) WITHOUT REGARD TO THE DISCRETIONARY OR MINISTERIAL
11 NATURE OF THE CONDUCT IN QUESTION, EACH GOVERNMENTAL AGENCY OFFI-
12 CER AND EMPLOYEE, EACH VOLUNTEER ACTING ON BEHALF OF A GOVERNMEN-
13 TAL AGENCY, AND EACH MEMBER OF A GOVERNMENTAL AGENCY BOARD, COUN-
14 CIL, COMMISSION, OR STATUTORILY CREATED TASK FORCE IS IMMUNE FROM
15 LIABILITY IN AN ACTION TO RECOVER DAMAGES WITH RESPECT TO PROVID-
16 ING MEDICAL CARE OR TREATMENT TO A PATIENT RESULTING DIRECTLY OR
17 INDIRECTLY FROM A COMPUTER DATE FAILURE, INCLUDING BUT NOT
18 LIMITED TO AN ACTION BASED ON AN ALLEGED FAILURE TO DETECT, DIS-
19 CLOSE, PREVENT, REPORT ON, OR REMEDIATE A COMPUTER DATE FAILURE
20 OR AN ACTION BASED ON A SECTION OF THIS ACT IF ALL OF THE FOLLOW-
21 ING ARE MET:

22 (A) THE INJURY OR DAMAGE IS CAUSED BY THE OFFICER, EMPLOYEE,
23 OR MEMBER WHILE IN THE COURSE OF EMPLOYMENT OR SERVICE OR BY THE
24 VOLUNTEER WHILE ACTING ON BEHALF OF THE GOVERNMENTAL AGENCY.

25 (B) THE OFFICER, EMPLOYEE, MEMBER, OR VOLUNTEER IS ACTING OR
26 REASONABLY BELIEVES HE OR SHE IS ACTING WITHIN THE SCOPE OF HIS
27 OR HER AUTHORITY.

1 (C) THE OFFICER'S, EMPLOYEE'S, MEMBER'S, OR VOLUNTEER'S
2 CONDUCT DOES NOT AMOUNT TO GROSS NEGLIGENCE THAT IS THE PROXIMATE
3 CAUSE OF THE INJURY OR DAMAGE. AS USED IN THIS SUBDIVISION,
4 "GROSS NEGLIGENCE" MEANS CONDUCT SO RECKLESS AS TO DEMONSTRATE A
5 SUBSTANTIAL LACK OF CONCERN FOR WHETHER AN INJURY OR SUBSTANTIAL
6 DAMAGE RESULTS.

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

11 (A) THE AUTHORITY OF A POLITICAL SUBDIVISION TO ENTER INTO
12 AN AGREEMENT THAT WAIVES OR LIMITS ITS IMMUNITY DESCRIBED IN SUB-
13 SECTION (1) AND THAT CONTAINS PROVISIONS THE POLITICAL SUBDIVI-
14 SION FINDS APPROPRIATE ON THE ISSUE OF ITS LIABILITY, DAMAGES, OR
15 BOTH FOR COMPUTER DATE FAILURE.

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

21 Sec. 13. ~~The~~ EXCEPT AS PROVIDED IN SECTION 7A WITH
22 RESPECT TO PROVIDING MEDICAL CARE OR TREATMENT TO A PATIENT, THE
23 immunity of the governmental agency ~~shall~~ DOES not apply to
24 actions to recover for bodily injury or property damage arising
25 out of the performance of a proprietary function as defined in
26 this section. Proprietary function ~~shall mean any~~ MEANS AN
27 activity ~~which~~ THAT is conducted primarily for the purpose of

1 producing a pecuniary profit for the governmental agency,
2 excluding, however, ~~any~~ AN activity normally supported by taxes
3 or fees. ~~No~~ AN action shall NOT be brought against the govern-
4 mental agency for injury or property damage arising out of the
5 operation of proprietary function, except for injury or loss suf-
6 fered on or after July 1, 1965.