

Act No. 242
Public Acts of 1999
Approved by the Governor
December 28, 1999
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999**

Introduced by Reps. DeHart and Schermesser

ENROLLED HOUSE BILL No. 4469

AN ACT 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:

Sec. 7b. (1) Except as provided in section 13 and this section, a municipal corporation engaged in the exercise or discharge of a governmental function is immune from liability in an action to recover damages resulting directly or indirectly from a computer date failure, including, but not limited to, an action based on an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure or an action based on section 2, 3, 5, 6, or 7.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each municipal corporation officer and employee, each volunteer acting on behalf of a municipal corporation, and each member of a municipal corporation board, council, commission, or statutorily created task force is immune from liability in an action to recover damages resulting directly or indirectly from a computer date failure, including, but not limited to, an action based on an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure or an action based on section 2, 3, 5, 6, or 7 if all of the following are met:

(a) The damage is caused by the officer, employee, or member while in the course of employment or service or by the volunteer while acting on behalf of the municipal corporation.

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

(c) The municipal corporation is engaged in the exercise or discharge of a governmental function.

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

(3) This section shall not be construed as modifying or restricting the immunity of a governmental agency otherwise provided in this act. This section does not limit either of the following:

(a) The authority of a municipal corporation to enter into an agreement that waives or limits its immunity described in subsection (1) and that contains provisions the municipal corporation finds appropriate on the issue of its liability, damages, or both for computer date failure.

(b) The authority of a governmental agency to enter into an agreement that waives or limits its immunity described in section 7a(3) and that contains provisions the governmental agency finds appropriate on the issue of its liability, damages, or both for computer date failure.

(4) This section does not apply to an action to recover damages for a wrongful death or injury to a person resulting from a computer date failure.

(5) As used in this section:

(a) "Computer" means a high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.

(b) "Computer date failure" means a malfunction, including, but not limited to, the malfunction of an electronic or mechanical device or the inability of a computer, a computer network, a computer program, computer software, an embedded chip, or a computer system to accurately store, process, receive, or transmit data, that is caused directly or indirectly by the failure of a computer, a computer network, a computer program, computer software, an embedded chip, or a computer system to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times in the years 1999 and 2000 and beyond.

(c) "Computer network" means an interconnection of 2 or more computers or computer systems by satellite, microwave, line, cable, wiring, or other communication medium with the capability to transmit information among the computers or computer systems.

(d) "Computer program" means an ordered set of data-coded instructions or statements that when executed by a computer cause the computer system to process data or perform specific functions.

(e) "Computer software" means a set of computer programs, procedures, and associated documentation related to the operation of a computer, computer system, or computer network.

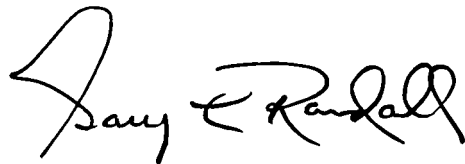
(f) "Computer system" means a combination of a computer or a computer network with the documentation, computer software, or physical facilities supporting the computer or computer network.

(g) "Embedded chip" means a single or multiple microprocessor chip that operates in conjunction with software, including software on the chip itself, and that in some way controls a device or equipment, including, but not limited to, a computer or other electronic or mechanical device.

(6) This section is repealed January 1, 2003.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

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Governor.