

HOUSE BILL No. 6051

June 24, 2004, Introduced by Reps. Farrah, Tobocman, Condino, Elkins, Sheltrown, Vagnozzi, Adamini, Brown, Palsrok, Wojno, Accavitti, Acciavatti, Plakas, Dennis, Gillard, Sak, O'Neil, Gaffney, Caswell, Nofs, Hunter, Hopgood and Stakoe and referred to the Committee on Judiciary.

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, employees, and volunteers and for paying damages sought or awarded against them; to provide for the legal defense of public officers, employees, and volunteers; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal acts and parts of acts,"

by amending sections 1 and 7 (MCL 691.1401 and 691.1407), section 1 as amended by 2001 PA 131 and section 7 as amended by 2000 PA 318, and by adding section 7c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Governmental agency" means the state or a political

1 subdivision.

2 (b) "Governmental function" means an activity that is
3 expressly or impliedly mandated or authorized by constitution,
4 statute, local charter or ordinance, or other law. Governmental
5 function includes an activity, as directed or assigned by his or
6 her public employer for the purpose of public safety, performed
7 on public or private property by a sworn law enforcement officer
8 within the scope of the law enforcement officer's authority.

9 (c) "Gross negligence" means conduct so reckless as to
10 demonstrate a substantial lack of concern for whether an injury
11 results.

12 (d) "Highway" means a public highway, road, or street that is
13 open for public travel and includes bridges, sidewalks,
14 trailways, crosswalks, and culverts on the highway. The term
15 highway does not include alleys, trees, and utility poles.

16 (e) ~~-(a)-~~ "Municipal corporation" means a city, village, or
17 township or a combination of 2 or more of these when acting
18 jointly.

19 (f) ~~-(b)-~~ "Political subdivision" means a municipal
20 corporation, county, county road commission, school district,
21 community college district, port district, metropolitan district,
22 or transportation authority or a combination of 2 or more of
23 these when acting jointly; a district or authority authorized by
24 law or formed by 1 or more political subdivisions; or an agency,
25 department, court, board, or council of a political subdivision.

26 (g) ~~-(c)-~~ "State" means the state of Michigan and its
27 agencies, departments, commissions, courts, boards, councils, and

1 statutorily created task forces and includes every public
2 university and college of the state, whether established as a
3 constitutional corporation or otherwise.

4 ~~(d) "Governmental agency" means the state or a political~~
5 ~~subdivision.~~

6 ~~—— (e) "Highway" means a public highway, road, or street that is~~
7 ~~open for public travel and includes bridges, sidewalks,~~
8 ~~trailways, crosswalks, and culverts on the highway. The term~~
9 ~~highway does not include alleys, trees, and utility poles.~~

10 ~~—— (f) "Governmental function" is an activity that is expressly~~
11 ~~or impliedly mandated or authorized by constitution, statute,~~
12 ~~local charter or ordinance, or other law. Governmental function~~
13 ~~includes an activity, as directed or assigned by his or her~~
14 ~~public employer for the purpose of public safety, performed on~~
15 ~~public or private property by a sworn law enforcement officer~~
16 ~~within the scope of the law enforcement officer's authority.~~

17 ~~(h) —(g)— "Township" includes charter township.~~

18 ~~(i) —(h)— "Volunteer" means an individual who is specifically~~
19 ~~designated as a volunteer and who is acting solely on behalf of a~~
20 ~~governmental agency.~~

21 Sec. 7. (1) Except as otherwise provided in this act, a
22 governmental agency is immune from tort liability if the
23 governmental agency is engaged in the exercise or discharge of a
24 governmental function. Except as otherwise provided in this act,
25 this act does not modify or restrict the immunity of the state
26 from tort liability as it existed before July 1, 1965, which
27 immunity is affirmed.

1 (2) Except as otherwise provided in this section, and without
2 regard to the discretionary or ministerial nature of the conduct
3 in question, each officer and employee of a governmental agency,
4 each volunteer acting on behalf of a governmental agency, and
5 each member of a board, council, commission, or statutorily
6 created task force of a governmental agency is immune from tort
7 liability for an injury to a person or damage to property caused
8 by the officer, employee, or member while in the course of
9 employment or service or caused by the volunteer while acting on
10 behalf of a governmental agency if all of the following are met:

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

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

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

21 (3) Subsection (2) does not alter the law of intentional
22 torts as it existed before July 7, 1986.

23 (4) ~~Except as provided in section 7a, this~~ **This** act does
24 not grant immunity to a governmental agency or an employee or
25 agent of a governmental agency with respect to providing medical
26 care or treatment to a patient, except medical care or treatment
27 provided to a patient in a hospital owned or operated by the

1 department of community health or a hospital owned or operated by
2 the department of corrections.

3 (5) A judge, a legislator, and the elective or highest
4 appointive executive official of all levels of government are
5 immune from tort liability for injuries to persons or damages to
6 property if he or she is acting within the scope of his or her
7 judicial, legislative, or executive authority.

8 (6) A guardian ad litem is immune from civil liability for an
9 injury to a person or damage to property if he or she is acting
10 within the scope of his or her authority as guardian ad litem.
11 This subsection applies to actions filed before, on, or after May
12 1, 1996.

13 **Sec. 7c. (1) Except as provided in subsection (4), a**
14 **municipal corporation, organized fire department, or agent of a**
15 **municipal corporation or organized fire department that acts**
16 **reasonably in donating qualified fire control or rescue equipment**
17 **to an organized fire department is not liable for damages for**
18 **personal injury, death, or property damage proximately caused**
19 **after the donation by a defect in the equipment.**

20 (2) Except as provided in subsection (4), a governmental
21 agency or an agent of a governmental agency that acts reasonably
22 in distributing qualified fire control or rescue equipment to an
23 organized fire department is not liable for damages for personal
24 injury, death, or property damage proximately caused after the
25 distribution by a defect in the equipment.

26 (3) The immunity provided under subsections (1) and (2) also
27 applies for donated or distributed fire control or rescue

1 equipment that has not been recertified by an authorized
2 technician as provided in this section under 1 of the following
3 circumstances:

4 (a) The organized fire department that receives the equipment
5 does not attempt to have the equipment recertified.

6 (b) The equipment fails the recertification and the organized
7 fire department that receives the equipment does not, after the
8 failure, return the equipment to the person that donated or
9 distributed it.

10 (4) The immunity provided by this section does not apply in 1
11 or more of the following circumstances:

12 (a) The defect results from an act or omission of the person
13 that donates or distributes the equipment that constitutes gross
14 negligence or intentional misconduct.

15 (b) The person that donates or distributes the equipment is
16 the manufacturer of the equipment.

17 (c) The person that donates or distributes the equipment
18 modifies or alters the equipment after it has been donated and
19 recertified by an authorized technician as meeting the
20 manufacturer's original specifications.

21 (5) As used in this section:

22 (a) "Authorized technician" means a technician that is
23 certified by the manufacturer of fire control or rescue equipment
24 to inspect the equipment, regardless of whether the technician is
25 employed by the governmental agency distributing or receiving the
26 equipment.

27 (b) "Organized fire department" means that term as defined in

1 section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.

2 (c) "Qualified fire control or rescue equipment" means fire
3 control or rescue equipment that is distributed through a
4 governmental agency to an organized fire department and
5 recertified by an authorized technician as meeting the
6 manufacturer's original specifications.