



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bill 39 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Raymond E. Basham  
Committee: Judiciary

Date Completed: 11-22-10

### **RATIONALE**

Under the governmental immunity law, officers and employees of governmental agencies are immune from tort liability for personal injury or property damage caused by them while in the course of employment or service. That immunity applies if the officer or employee is acting or reasonably believes he or she is acting within the scope of his or her authority; the governmental agency is engaged in the exercise or discharge of a governmental function; and the officer's or employee's conduct does not amount to gross negligence. If an off-duty police officer responds to an emergency situation, however, the officer may not qualify for immunity under the law because he or she is not acting in the course of employment or service. Some people believe that governmental immunity should cover a law enforcement officer's actions in an emergency situation, when the actions would be within the scope of the officer's authority if he or she were acting in the course of employment or service.

### **CONTENT**

The bill would amend the governmental immunity law to provide that a law enforcement officer who was not acting in the course of employment or service would be immune from tort liability for personal injury or property damage caused by the officer if all of the following applied:

- The officer, in good faith, acted in response to an emergency situation that presented the threat of immediate serious physical injury or death to another individual.

- The officer's acts would be within the scope of his or her authority if he or she were acting in the course of his or her employment or service.
- The officer's acts did not amount to gross negligence or willful and wanton misconduct.

"Law enforcement officer" would mean that term as defined in the Commission on Law Enforcement Standards Act.

MCL 691.1407

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Reportedly, a number of years ago, an off-duty Inkster police officer who had a police dog with him stopped outside of the Inkster city limits to assist with a car that had gone off the road. The officer intervened when he discovered that a male passenger in the car was abusing the female driver. The passenger then attacked the officer, and the police dog reacted to protect the officer, biting the passenger. The passenger sued the city and the police officer, but the city refused to pay for the officer's legal defense because the event happened outside of Inkster. Since the officer was off duty and outside of the employing jurisdiction, he evidently did not qualify for immunity under the law because his actions were not within the scope of his employment.

Many people consider law enforcement officers to be on duty 24 hours a day, seven days a week, and expect them to intercede in dangerous situations and render assistance where necessary. Although that is exactly what the Inkster police officer did, he was exposed to personal liability for his actions because he was not on duty or within his geographic jurisdiction. This situation could discourage law enforcement officers from reacting to emergencies when they were not on duty and/or within the physical boundaries of the local unit that employs them. By extending protections under the governmental immunity law to police officers in those situations, the bill would encourage officers to render assistance and would shield them from liability for actions that otherwise would be within the scope of their authority.

### **Supporting Argument**

The protections extended to off-duty police officers would be similar to those afforded to physicians and others under the Good Samaritan law. That statute provides civil immunity to certain medical professionals who assist in emergency situations. The Good Samaritan law is designed to encourage bystanders who are health care professionals to offer on-site care or assistance in an emergency situation, regardless of whether it is done within the course of their employment, without being exposed to a civil action brought by the people they attempt to assist. Law enforcement officers responding to emergencies also should be shielded from liability in those kinds of situations.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would result in indeterminate savings to the State and local units of government related to potential future liability.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.