

# SENATE BILL No. 539

September 24, 2013, Introduced by Senator NOFS and referred to the Committee on Energy and Technology.

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 section 7 (MCL 691.1407), as amended by 2005 PA 318.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 7. (1) Except as otherwise provided in this act, a  
2       governmental agency is immune from tort liability if the  
3       governmental agency is engaged in the exercise or discharge of a  
4       governmental function. Except as otherwise provided in this act,

1 this act does not modify or restrict the immunity of the state from  
2 tort liability as it existed before July 1, 1965, which immunity is  
3 affirmed.

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

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

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

19 (c) The officer's, employee's, member's, or volunteer's  
20 conduct does not amount to gross negligence that is the proximate  
21 cause of the injury or damage.

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

24 (4) This act does not grant immunity to a governmental agency  
25 or an employee or agent of a governmental agency with respect to  
26 providing medical care or treatment to a patient, except medical  
27 care or treatment provided to a patient in a hospital owned or

1 operated by the department of community health or a hospital owned  
2 or operated by the department of corrections and except care or  
3 treatment provided by an uncompensated search and rescue operation  
4 medical assistant or tactical operation medical assistant.

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

10 (6) A guardian ad litem is immune from civil liability for an  
11 injury to a person or damage to property if he or she is acting  
12 within the scope of his or her authority as guardian ad litem. This  
13 subsection applies to actions filed before, on, or after May 1,  
14 1996.

15 (7) **THE IMMUNITY PROVIDED BY THIS ACT DOES NOT APPLY TO**  
16 **LIABILITY OF A GOVERNMENTAL AGENCY UNDER THE MISS DIG UNDERGROUND**  
17 **FACILITY DAMAGE PREVENTION AND SAFETY ACT.**

18 (8) ~~(7)~~—As used in this section:

19 (a) "Gross negligence" means conduct so reckless as to  
20 demonstrate a substantial lack of concern for whether an injury  
21 results.

22 (b) "Search and rescue operation" means an action by a  
23 governmental agency to search for, rescue, or recover victims of a  
24 natural or manmade disaster, accident, or emergency on land or  
25 water.

26 (c) "Search and rescue operation medical assistant" means an  
27 individual licensed to practice 1 or more of the occupations listed

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1 in subdivision (e), acting within the scope of the license, and  
2 assisting a governmental agency in a search and rescue operation.

3 (d) "Tactical operation" means a coordinated, planned action  
4 by a special operations, weapons, or response team of a law  
5 enforcement agency that is 1 of the following:

6 (i) Taken to deal with imminent violence, a riot, an act of  
7 terrorism, or a similar civic emergency.

8 (ii) The entry into a building, area, watercraft, aircraft,  
9 land vehicle, or body of water to seize evidence, or to arrest an  
10 individual for a felony, under the authority of a warrant issued by  
11 a court.

12 (iii) Training for the team.

13 (e) "Tactical operation medical assistant" means an individual  
14 licensed to practice 1 or more of the following, acting within the  
15 scope of the license, and assisting law enforcement officers while  
16 they are engaged in a tactical operation:

17 (i) Medicine, osteopathic medicine and surgery, or as a  
18 registered professional nurse, under article 15 of the public  
19 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

20 (ii) As an emergency medical technician, emergency medical  
21 technician specialist, or paramedic under part 209 of the public  
22 health code, 1978 PA 368, MCL 333.20901 to 333.20979.

[Enacting section 1. This amendatory act takes effect April 1,  
2014.]

23 Enacting section [2]. This amendatory act does not take effect  
24 unless Senate Bill No. 540

25 of the 97th Legislature is enacted into law.