

**SUBSTITUTE FOR
SENATE BILL NO. 899**

A bill to amend 1976 PA 390, entitled
"Emergency management act,"
by amending section 11 (MCL 30.411), as amended by 2005 PA 321.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. (1) Personnel of disaster relief forces while on duty
2 are subject to all of the following provisions:

3 (a) If they are employees of this state, they have the powers,
4 duties, rights, privileges, and immunities of and receive the
5 compensation incidental to their employment.

6 (b) If they are employees of a political subdivision of this
7 state, regardless of where serving, they have the powers, duties,
8 rights, privileges, and immunities and receive the compensation
9 incidental to their employment.

(c) If they are not employees of this state or a political subdivision of this state, they are entitled to the same rights and immunities as provided by law for the employees of this state. All personnel of disaster relief forces shall, while on duty, be subject to the operational control of the authority in charge of disaster relief activities in the area in which they are serving, and shall be reimbursed for all actual and necessary travel and subsistence expenses.

(2) This state, any political subdivision of this state, or the employees, agents, or representatives of this state or any political subdivision of this state are not liable for personal injury or property damage sustained by any person appointed or acting as a member of disaster relief forces. This act does not affect the right of a person to receive benefits or compensation to which he or she may otherwise be entitled to under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, any pension law, or any act of ~~congress~~. **Congress.**

(3) This state or a political subdivision of this state engaged in disaster relief activity is not liable for the death of or injury to a person or persons, or for damage to property, as a result of that activity. The employees, agents, or representatives of this state or a political subdivision of this state and nongovernmental disaster relief force workers or private or volunteer personnel engaged in disaster relief activity are immune from tort liability to the extent provided under section 7 of 1964 PA 170, MCL 691.1407. ~~As used in this section, "disaster relief activity" includes training for or responding to an actual, impending, mock, or practice disaster or emergency.~~

(4) ~~A person licensed to practice medicine or osteopathic~~

1 ~~medicine and surgery or a licensed hospital,~~ **health care**
2 **professional or a health care facility**, whether licensed in this or
3 another state or by the federal government or a branch of the ~~armed~~
4 ~~forces~~ **Armed Forces** of the United States, or an individual listed
5 **described** in subsection (6), who renders **health care** services
6 during a state of disaster declared by the governor ~~and at the~~
7 ~~express or implied request of a state official or agency or county~~
8 ~~or local coordinator or executive body,~~ **under this act or under a**
9 **state of emergency declared under 1945 PA 302, MCL 10.31 to 10.33,**
10 **in support of this state's response to the state of disaster**
11 **declared under this act or under a state of emergency declared**
12 **under 1945 PA 302, MCL 10.31 to 10.33,** is considered an authorized
13 disaster relief worker or facility and is not liable, ~~for an injury~~
14 ~~sustained by a person by reason of those services,~~ **civilly or**
15 **criminally, for any harm or damages sustained or alleged to have**
16 **been sustained as a result of any act or omission occurring in the**
17 **course of arranging for, providing, or making decisions regarding**
18 **health care services** regardless of how or under what circumstances
19 or by what cause those injuries are sustained. The immunity granted
20 by this subsection does not apply in the event of an act or
21 omission that is willful or gross negligence, **constitutes willful**
22 **or intentional criminal misconduct, or constitutes intentional**
23 **infliction of harm by the health care facility, health care**
24 **professional, or other health care provider arranging for,**
25 **providing, or making decisions regarding health care services.**
26 However, those acts, omissions, or decisions impacting any patient,
27 employee, agent, family member, volunteer, visitor, business
28 partner, or other individual resulting in whole or in part from a
29 shortage of personal protection equipment, resources, medical

1 equipment, or staffing is not considered to be willful or gross
2 negligence, willful or intentional criminal misconduct, or an
3 intentional infliction of harm. The immunity granted under this
4 section extends to a health care professional's or health care
5 facility's reliance on a patient's advanced directive witnessed by
6 health care facility employees, provided that those employees were
7 not directly involved in the patient's care prior to witnessing the
8 patient's advanced directive. Nothing in this section affects the
9 rights conferred on injured employees and employers under the
10 worker's disability compensation act of 1969, 1969 PA 317, MCL
11 418.101 to 418.941, including, but not limited to, the definition
12 of intentional tort and the exclusive remedy provisions available
13 to employees as provided in sections 131 and 827 of the worker's
14 disability compensation act of 1969, 1969 PA 317, MCL 418.131 and
15 418.827. If a civil action for malpractice is filed alleging an act
16 or omission that is willful or gross negligence resulting in
17 injuries, the services rendered that resulted in those injuries
18 shall be judged according to the standards required of persons
19 licensed in this state to perform those services. **The immunity**
20 **granted to health care professionals and health care facilities**
21 **under this subsection due to this state's response to the COVID-19**
22 **pandemic applies to any acts or omissions while providing health**
23 **care services related to the COVID-19 pandemic during the COVID-19**
24 **state of emergency or state of disaster, including any period of**
25 **extension or renewal, and begins retroactive to March 10, 2020, the**
26 **date of the declaration of the COVID-19 state of emergency. Nothing**
27 **in this section removes or limits any immunity conferred by any**
28 **other provision of law of this state, law of any other state, or**
29 **federal law, rule, policy, executive order, or procedure. The**

1 immunity granted under this section remains in effect for the
2 duration of the COVID-19 state of emergency or state of disaster or
3 through September 30, 2020, whichever is later.

4 (5) An individual listed in subsection (6), during a state of
5 disaster declared by the governor, may practice, in addition to the
6 authority granted by other statutes of this state, the
7 administration of anesthetics; minor surgery; intravenous,
8 subcutaneous, or intramuscular procedure; or oral and topical
9 medication; or a combination of these under the supervision of a
10 member of the medical staff of a licensed hospital of this state,
11 and may assist the staff member in other medical and surgical
12 proceedings.

13 (6) Subsections (4) and (5) apply to all of the following
14 individuals:

15 (a) Any of the following, if licensed in this or another state
16 or by the federal government or a branch of the ~~armed forces~~ **Armed**
17 **Forces** of the United States:

18 (i) A registered nurse.

19 (ii) A practical nurse.

20 (iii) A nursing student acting under the supervision of a
21 licensed nurse.

22 (iv) A dentist.

23 (v) A veterinarian.

24 (vi) A pharmacist.

25 (vii) A pharmacist intern acting under the supervision of a
26 licensed pharmacist.

27 (viii) A paramedic.

28 (b) A medical resident undergoing training in a licensed
29 hospital in this or another state.

1 (c) Other licensed, registered, or unlicensed health care
2 professionals, or other health care providers, including their
3 employers; contractors, health care facility administrators,
4 executives, supervisors, board members, trustees, volunteers,
5 students, trainees, or other comparable individuals or agents of
6 health care facilities; and other individuals otherwise authorized
7 by executive order or law of this state to provide health care
8 services, with or without a license, during a state of emergency or
9 state of disaster.

10 (7) A person owning or controlling real estate or other
11 premises who voluntarily and without compensation grants to this
12 state or a political subdivision of this state a license or
13 privilege, or otherwise permits this state or a political
14 subdivision of this state to inspect, designate, and use the whole
15 or any part or parts of the real estate or other premises for the
16 purpose of sheltering persons during an actual, impending, mock, or
17 practice disaster, together with his or her successors in interest,
18 if any, is not civilly liable for negligently causing the death of
19 or injury to any person on or about the real estate or premises
20 under the license, privilege, or permission or for loss or damage
21 to the property of the person.

22 (8) A person owning or controlling real estate or other
23 premises who has gratuitously granted the use of the real estate or
24 other premises for the purposes stated in this section is legally
25 obligated to make known to the licensee any hidden dangers or
26 safety hazards that are known to the owner or occupant of the real
27 estate or premises that might possibly result in the death or
28 injury or loss of property to a person using the real estate or
29 premises.

(9) As used in this section: ~~"gross~~

(a) "Damages" means economic or noneconomic losses for harm to an individual including, but not limited to, compensatory damages, punitive damages, pain and suffering damages, liquidated damages, back pay, front pay, job restoration rights, attorney fees and costs, or any other monetary or nonmonetary recovery available in law or in equity.

(b) "Disaster relief activity" includes training for or responding to an actual, impending, mock, or practice disaster or emergency.

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

(d) "Harm" includes any physical or nonphysical act or omission that results in injury to or death of an individual.

(e) "Health care facility" means 1 or more of the following:

(i) A health facility or agency described in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(ii) State-owned surgical centers.

(iii) State-operated outpatient facilities.

(iv) State-operated veterans facilities.

(v) Facilities used as surge capacity for any of the health care facilities described in this subdivision.

(f) "Health care professional" means a person licensed, registered, or otherwise authorized to engage in a health profession under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(g) "Health care provider" means an individual who is otherwise authorized to provide health care services during a state

1 of emergency or state of disaster.

2 (h) "Health care services" means services provided by a health
3 care facility, health care professional, or other health care
4 provider regardless of the location where those services are
5 provided, including the provision of health care services via
6 telehealth or other remote method.