

HOUSE BILL NO. 4307

February 23, 2021, Introduced by Reps. Berman, Brixie, Wozniak, Maddock, Peterson, Steckloff, Cambensy, Cynthia Johnson and O'Neal and referred to the Committee on Oversight.

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 2013 PA 173, and by adding section 7d.

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

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

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

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

23 (c) The officer's, employee's, member's, or volunteer's
24 conduct does not amount to gross negligence that is the proximate

1 cause of the injury or damage.

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

4 (4) This act does not grant immunity to a governmental agency
5 or an employee or agent of a governmental agency with respect to
6 providing medical care or treatment to a patient, except medical
7 care or treatment provided to a patient in a hospital owned or
8 operated by the department of ~~community~~ health **and human services**
9 or a hospital owned or operated by the department of corrections
10 and except care or treatment provided by an uncompensated search
11 and rescue operation medical assistant or tactical operation
12 medical assistant.

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

18 (6) A guardian ad litem is immune from civil liability for an
19 injury to a person or damage to property if he or she is acting
20 within the scope of his or her authority as guardian ad litem. This
21 subsection applies to actions filed before, on, or after May 1,
22 1996.

23 (7) The immunity provided by this act does not apply to
24 liability of a governmental agency under the MISS DIG underground
25 facility damage prevention and safety act, **2013 PA 174, MCL 460.721**
26 **to 460.733.**

27 (8) As used in this section:

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

1 results.

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

6 (c) "Search and rescue operation medical assistant" means an
7 individual licensed to practice 1 or more of the occupations listed
8 in subdivision (e), acting within the scope of the license, and
9 assisting a governmental agency in a search and rescue operation.

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

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

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

19 (iii) Training for the team.

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

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

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

1 Sec. 7d. (1) This act does not grant immunity to a
2 governmental agency or an employee or agent of a governmental
3 agency with respect to conduct involving criminal sexual conduct if
4 the governmental agency or employee or agent of the governmental
5 agency knew or should have known that the individual who committed
6 the criminal sexual conduct had committed a prior act of criminal
7 sexual conduct and the governmental agency or employee or agent of
8 the governmental agency failed to act or intervene to prevent the
9 subsequent criminal sexual conduct.

10 (2) Nothing in this, any previous, or any subsequent act
11 limits the availability of causes of action permitted to a
12 plaintiff, including causes of action against persons other than
13 the individual alleged to have committed the criminal sexual
14 conduct.

15 (3) For purposes of this section, it is not necessary for a
16 criminal prosecution or other proceeding to have been brought as a
17 result of the criminal sexual conduct or if a criminal prosecution
18 or other proceeding has been brought, for the prosecution or
19 proceeding to have resulted in a conviction or adjudication.

20 (4) As used in this section:

21 (a) "Adjudication" means an adjudication of 1 or more offenses
22 under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL
23 712A.1 to 712A.32.

24 (b) "Criminal sexual conduct" means conduct prohibited under
25 section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code,
26 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and
27 750.520g.

28 Enacting section 1. This amendatory act is curative, must be
29 retroactively applied, applies to actions pending on the effective

1 date of this amendatory act, and is intended to express the
2 original intent of the legislature regarding the application of
3 1964 PA 170, MCL 691.1401 to 691.1419.