

HOUSE BILL NO. 5023

June 15, 2021, Introduced by Reps. Cynthia Johnson, Yancey, Aiyash, Brixie, Scott, Cavanagh, Puri, Brabec, Steckloff, Hertel, Sowerby, O'Neal, Rogers, Neeley, Brenda Carter, Thanedar, Whitsett, Rabhi and Jones and referred to the Committee on Government Operations.

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.

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, and without
9 regard to the discretionary or ministerial nature of the conduct in
10 question, each officer and employee of a governmental agency, each
11 volunteer acting on behalf of a governmental agency, and each
12 member of a board, council, commission, or statutorily created task
13 force of a governmental agency is immune from tort liability for an
14 injury to a person or damage to property caused by the officer,
15 employee, or member while in the course of employment or service or
16 caused by the volunteer while acting on behalf of a governmental
17 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
25 cause of the injury or damage.

1 (3) Subsection (2) does not alter the law of intentional torts
2 as it existed before July 7, 1986. **That law governs allegations of**
3 **intentional tort with the exception of actions brought under**
4 **section 7d.**

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

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

19 (6) A guardian ad litem is immune from civil liability for an
20 injury to a person or damage to property if he or she is acting
21 within the scope of his or her authority as guardian ad litem. This
22 subsection applies to actions filed before, on, or after May 1,
23 1996.

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

28 (8) As used in this section:

29 (a) "Gross negligence" means conduct so reckless as to

1 demonstrate a substantial lack of concern for whether an injury
2 results.

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

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

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

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

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

20 (iii) Training for the team.

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

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

28 (ii) As an emergency medical technician, emergency medical
29 technician specialist, or paramedic under part 209 of the public

1 health code, 1978 PA 368, MCL 333.20901 to 333.20979.

2 Enacting section 1. This amendatory act does not take effect
3 unless all of the following bills of the 101st Legislature are
4 enacted into law:

5 (a) Senate Bill No. ____ or House Bill No. 5024 (request no.
6 03293'21).

7 (b) Senate Bill No. ____ or House Bill No. 5022 (request no.
8 03294'21).