

HOUSE BILL No. 5901

June 21, 1990, Introduced by Reps. Profit, Martin, Harrison, Perry Bullard, Gubow, Murphy and Barns and referred to the Committee on Judiciary.

A bill to amend the title and sections 1, 5, 6a, 7, and 8 of Act No. 170 of the Public Acts of 1964, entitled as amended

"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 and paying damages sought or awarded against them; to provide for the legal defense of public officers and employees; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal certain acts and parts of acts,"

sections 1 and 7 as amended and section 6a as added by Act No. 175 of the Public Acts of 1986, being sections 691.1401, 691.1405, 691.1406a, 691.1407, and 691.1408 of the Michigan Compiled Laws.

Section 1. The title and sections 1, 5, 6a, 7, and 8 of Act No. 170 of the Public Acts of 1964, sections 1 and 7 as amended and section 6a as added by Act No. 175 of the Public Acts of 1986, being sections 691.1401, 691.1405, 691.1406a, 691.1407, and 691.1408 of the Michigan Compiled Laws, are amended to read as follows:

8 An act to make uniform the liability of municipal corpora-
9 tions, political subdivisions, and the state, its agencies and
10 departments, officers, employees, and volunteers thereof, and
11 members of certain boards, councils, and task forces when engaged
12 in the exercise or discharge of a governmental function, for
13 injuries to property and persons; to define and limit this
14 liability; TO CREATE CERTAIN PRESUMPTIONS; to define and limit
15 the liability of the state when engaged in a proprietary func-
16 tion; to authorize the purchase of liability insurance to protect
17 against loss arising out of this liability; to provide for
18 defending certain claims made against public officers and paying
19 damages sought or awarded against them; to provide for the legal
20 defense of public officers and employees; to provide for reim-
21 bursement of public officers and employees for certain legal
22 expenses; and to repeal certain acts and parts of acts.

24 (a) "Municipal corporation" means any city, village, town-
25 ship or charter township, or any combination thereof, when acting
26 jointly.

1 (b) "Political subdivision" means any municipal corporation,
2 county, county road commission, township, charter township,
3 school district, community college district, port district, or
4 metropolitan district, transportation authority, or any combina-
5 tion thereof, when acting jointly, and any district or authority
6 authorized by law or formed by 1 or more political subdivisions,
7 and any agency, department, court, board, or council of a politi-
8 cal subdivision.

9 (c) "State" means the state of Michigan and its agencies,
10 departments, commissions, courts, boards, councils, statutorily
11 created task forces, and shall include every public university
12 and college of the state, whether established as a constitutional
13 corporation or otherwise.

14 (d) "Governmental agency" means the state, political subdi-
15 visions, and municipal corporations.

16 (e) "Highway" means every public highway, road, and street
17 which is open for public travel and shall include bridges, side-
18 walks, crosswalks, and culverts on any highway. The term highway
19 does not include alleys, trees, and utility poles.

20 (f) "Governmental function" is an activity which is
21 expressly or impliedly mandated or authorized by constitution,
22 statute, local charter or ordinance, or other law.

23 (g) "Volunteer" means an individual who is specifically des-
24 ignated as such and who is acting solely on behalf of a govern-
25 mental agency.

26 (H) "LAW ENFORCEMENT AGENCY" MEANS THAT TERM AS DEFINED IN
27 SECTION 2 OF THE HIGH SPEED PURSUIT MODEL POLICY ACT.

1 Sec. 5. (1) Governmental agencies ~~shall be~~ ARE liable for
2 bodily injury and property damage resulting from the negligent
3 operation by ~~any~~ AN officer, agent, or employee of the govern-
4 mental agency, of a motor vehicle of which the governmental
5 agency is owner, as defined in Act No. 300 of the Public Acts of
6 1949, as amended, being sections 257.1 to 257.923 of the MICHIGAN
7 Compiled Laws. ~~of 1948.~~

8 (2) IF A LAW ENFORCEMENT AGENCY HAS NOT ADOPTED A MODEL
9 POLICY PURSUANT TO SECTION 5 OF THE HIGH SPEED PURSUIT MODEL
10 POLICY ACT WHEN THE LAW ENFORCEMENT AGENCY IS INVOLVED IN A HIGH
11 SPEED PURSUIT, A REBUTTABLE PRESUMPTION OF NEGLIGENT OPERATION
12 EXISTS IF BODILY INJURY OR PROPERTY DAMAGE RESULTS FROM THE USE
13 OF A MOTOR VEHICLE DESCRIBED IN SUBSECTION (1) IN THE HIGH SPEED
14 PURSUIT, BUT THE PRESUMPTION IS NOT AVAILABLE TO THE PURSUED
15 PERSON OR A PERSON ACTING IN CONCERT WITH THE PURSUED PERSON.
16 EXCEPT FOR A JUDGMENT AWARDED TO THE PURSUED PERSON OR A PERSON
17 ACTING IN CONCERT WITH THE PURSUED PERSON, THE COUNTY, CITY, VIL-
18 LAGE, OR TOWNSHIP HAVING JURISDICTION OVER THE LAW ENFORCEMENT
19 AGENCY IS LIABLE FOR AT LEAST 25% OF A JUDGMENT IMPOSED FOR
20 LIABILITY UNDER THIS SECTION.

21 Sec. 6a. (1) ~~A~~ SUBJECT TO SUBSECTION (2), A governmental
22 agency against whom judgment has been entered pursuant to this
23 act may seek subrogation where it is available by law or by con-
24 tract and recover contribution from each co-defendant and joint
25 and several tort-feasor where appropriate pursuant to sections
26 2925a to 2925d of the revised judicature act of 1961, Act No. 236

1 of the Public Acts of 1961, being sections 600.2925a to 600.2925d
2 of the Michigan Compiled Laws.

3 (2) IF A LAW ENFORCEMENT AGENCY HAS NOT ADOPTED A MODEL
4 POLICY PURSUANT TO SECTION 5 OF THE HIGH SPEED PURSUIT MODEL
5 POLICY ACT WHEN THE LAW ENFORCEMENT AGENCY IS INVOLVED IN A HIGH
6 SPEED PURSUIT, THE COUNTY, CITY, VILLAGE, OR TOWNSHIP HAVING
7 JURISDICTION OVER THE LAW ENFORCEMENT AGENCY SHALL NOT RECOVER
8 CONTRIBUTION FOR MORE THAN 75% OF A JUDGMENT ENTERED AGAINST IT
9 RELATING TO THE HIGH SPEED PURSUIT, EXCEPT IF CONTRIBUTION IS
10 SOUGHT FROM THE PURSUED PERSON OR A PERSON ACTING IN CONCERT WITH
11 THE PURSUED PERSON.

12 Sec. 7. (1) Except as otherwise provided in this act, all
13 governmental agencies shall be immune from tort liability in all
14 cases wherein the government agency is engaged in the exercise or
15 discharge of a governmental function. Except as otherwise pro-
16 vided in this act, this act shall not be construed as modifying
17 or restricting the immunity of the state from tort liability as
18 it existed before July 1, 1965, which immunity is affirmed.

19 (2) Except as otherwise provided in this section, and with-
20 out regard to the discretionary or ministerial nature of the con-
21 duct in question, each officer and employee of a governmental
22 agency, each volunteer acting on behalf of a governmental agency,
23 and each member of a board, council, commission, or statutorily
24 created task force of a governmental agency shall be immune from
25 tort liability for injuries to persons or damages to property
26 caused by the officer, employee, or member while in the course of

1 employment or service or volunteer while acting on behalf of a
2 governmental agency if all of the following are met:

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

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

8 (c) The officer's, employee's, member's, or volunteer's con-
9 duct does not amount to gross negligence that is the proximate
10 cause of the injury or damage. As used in this subdivision,
11 "gross negligence" means conduct so reckless as to demonstrate a
12 substantial lack of concern for whether an injury results.

13 (3) Subsection (2) shall not be construed as altering the
14 law of intentional torts as it existed prior to the effective
15 date of subsection (2).

16 (4) This act does not grant immunity to a governmental
17 agency with respect to the ownership or operation of a hospital
18 or county medical care facility or to the agents or employees of
19 such hospital or county medical care facility. As used in this
20 subsection:

21 (a) "County medical care facility" means that term as
22 defined in section 20104 of the public health code, Act No. 368
23 of the Public Acts of 1978, being section 333.20104 of the
24 Michigan Compiled Laws.

25 (b) "Hospital" means a facility offering inpatient, over-
26 night care, and services for observation, diagnosis, and active
27 treatment of an individual with a medical, surgical, obstetric,

1 chronic, or rehabilitative condition requiring the daily
2 direction or supervision of a physician. The term does not
3 include a hospital owned or operated by the department of mental
4 health or a hospital operated by the department of corrections.

5 (5) Judges, legislators, and the elective or highest
6 appointive executive officials of all levels of government are
7 immune from tort liability for injuries to persons or damages to
8 property whenever they are acting within the scope of their judi-
9 cial, legislative, or executive authority.

10 (6) IF A LAW ENFORCEMENT AGENCY HAS ADOPTED A MODEL POLICY
11 PURSUANT TO SECTION 5 OF THE HIGH SPEED PURSUIT MODEL POLICY ACT
12 WHEN THE LAW ENFORCEMENT AGENCY IS INVOLVED IN A HIGH SPEED PUR-
13 SUIT, A PEACE OFFICER OF THE LAW ENFORCEMENT AGENCY IS IMMUNE
14 FROM TORT LIABILITY FOR INJURIES TO PERSONS OR DAMAGES TO PROP-
15 ERTY RESULTING FROM THE HIGH SPEED PURSUIT IF THE PEACE OFFICER
16 ACTED IN ACCORDANCE WITH THE MODEL POLICY.

17 Sec. 8. (1) Whenever a claim is made or a civil action is
18 commenced against an officer or employee of a governmental agency
19 for injuries to persons or property caused by negligence of the
20 officer or employee while in the course of employment and while
21 acting within the scope of his or her authority, the governmental
22 agency may pay for, engage, or furnish the services of an attor-
23 ney to advise the officer or employee as to the claim and to
24 appear for and represent the officer or employee in the action.
25 The governmental agency may compromise, settle, and pay the claim
26 before or after the commencement of a civil action. Whenever a
27 judgment for damages is awarded against an officer or employee of

1 a governmental agency as a result of a civil action for personal
2 injuries or property damage caused by the officer or employee
3 while in the course of employment and while acting within the
4 scope of his or her authority, the governmental agency may indem-
5 nify the officer or employee or pay, settle, or compromise the
6 judgment.

7 (2) IF A LAW ENFORCEMENT AGENCY HAS NOT ADOPTED A MODEL
8 POLICY PURSUANT TO SECTION 5 OF THE HIGH SPEED PURSUIT MODEL
9 POLICY ACT WHEN THE LAW ENFORCEMENT AGENCY IS INVOLVED IN A HIGH
10 SPEED PURSUIT AND A CLAIM IS MADE OR A CIVIL ACTION IS COMMENCED
11 AGAINST A PEACE OFFICER OF THE LAW ENFORCEMENT AGENCY FOR INJU-
12 RIES TO PERSONS OR PROPERTY RESULTING FROM THE HIGH SPEED PUR-
13 SUIT, THE COUNTY, CITY, VILLAGE, OR TOWNSHIP HAVING JURISDICTION
14 OVER THE LAW ENFORCEMENT AGENCY SHALL PAY FOR, ENGAGE, OR FURNISH
15 THE SERVICES OF AN ATTORNEY TO ADVISE THE PEACE OFFICER AS TO THE
16 CLAIM AND TO APPEAR FOR AND REPRESENT THE PEACE OFFICER IN THE
17 ACTION. IF A JUDGMENT FOR DAMAGES IS AWARDED AGAINST A PEACE
18 OFFICER OF A LAW ENFORCEMENT AGENCY DESCRIBED IN THIS SUBSECTION
19 AS A RESULT OF A CIVIL ACTION FOR PERSONAL INJURIES OR PROPERTY
20 DAMAGE RESULTING FROM A HIGH SPEED PURSUIT, THE COUNTY, CITY,
21 VILLAGE, OR TOWNSHIP HAVING JURISDICTION OVER THE LAW ENFORCEMENT
22 AGENCY SHALL INDEMNIFY THE PEACE OFFICER FOR AT LEAST 25% OF THE
23 JUDGMENT OR PAY, SETTLE, OR COMPROMISE THE JUDGMENT. UNLESS THE
24 PLAINTIFF IS THE PURSUED PERSON OR A PERSON ACTING IN CONCERT
25 WITH THE PURSUED PERSON, THE COUNTY, CITY, VILLAGE, OR TOWNSHIP
26 HAVING JURISDICTION OVER THE LAW ENFORCEMENT AGENCY SHALL PAY THE
27 ATTORNEY FEES OF A PLAINTIFF WHO WAS INJURED AS A RESULT OF THE

1 HIGH SPEED PURSUIT OR IS SUING ON BEHALF OR IN PLACE OF AN
2 INJURED PLAINTIFF.

3 (3) ~~-(2)-~~ When a criminal action is commenced against an
4 officer or employee of a governmental agency based upon the con-
5 duct of the officer or employee in the course of employment, if
6 the employee or officer had a reasonable basis for believing that
7 he or she was acting within the scope of his or her authority at
8 the time of the alleged conduct, the governmental agency may pay
9 for, engage, or furnish the services of an attorney to advise the
10 officer or employee as to the action, and to appear for and rep-
11 resent the officer or employee in the action. An officer or
12 employee who has incurred legal expenses after December 31, 1975
13 for conduct prescribed in this subsection may obtain reimburse-
14 ment for those expenses under this subsection.

15 (4) IF A LAW ENFORCEMENT AGENCY HAS NOT ADOPTED A MODEL
16 POLICY PURSUANT TO SECTION 5 OF THE HIGH SPEED PURSUIT MODEL
17 POLICY ACT WHEN THE LAW ENFORCEMENT AGENCY IS INVOLVED IN A HIGH
18 SPEED PURSUIT AND A CRIMINAL ACTION IS COMMENCED AGAINST A PEACE
19 OFFICER OF THE LAW ENFORCEMENT AGENCY BASED UPON THE HIGH SPEED
20 PURSUIT, THE COUNTY, CITY, VILLAGE, OR TOWNSHIP HAVING JURISDIC-
21 TION OVER THE LAW ENFORCEMENT AGENCY SHALL PAY FOR, ENGAGE, OR
22 FURNISH THE SERVICES OF AN ATTORNEY TO ADVISE THE PEACE OFFICER
23 AS TO THE ACTION, AND TO APPEAR FOR AND REPRESENT THE PEACE OFFI-
24 CER IN THE ACTION.

25 (5) ~~-(3)- This section shall~~ EXCEPT AS PROVIDED IN
26 SUBSECTIONS (2) AND (4), THIS SECTION DOES not impose any
27 liability on a governmental agency.

1 Section 2. This amendatory act shall not take effect unless
2 Senate Bill No. _____ or House Bill No. 5896 (request
3 no. 05732'90 *) of the 85th Legislature is enacted into law.