

SENATE BILL No. 7

January 11, 1989, Introduced by Senators N. SMITH and WELBORN and referred to the Committee on Judiciary.

A bill to amend section 7 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,"

as amended by Act No. 175 of the Public Acts of 1986, being section 691.1407 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 7 of Act No. 170 of the Public Acts of
2 1964, as amended by Act No. 175 of the Public Acts of 1986, being

1 section 691.1407 of the Michigan Compiled Laws, is amended to
2 read as follows:

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

10 (2) Except as otherwise provided in this section, and with-
11 out regard to the discretionary or ministerial nature of the con-
12 duct in question, each officer and employee of a governmental
13 agency, each volunteer acting on behalf of a governmental agency,
14 and each member of a board, council, commission, or statutorily
15 created task force of a governmental agency shall be immune from
16 tort liability for injuries to persons or damages to property
17 caused by the officer, employee, or member while in the course of
18 employment or service or volunteer while acting on behalf of a
19 governmental agency if all of the following are met:

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

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

25 (c) The officer's, employee's, member's, or volunteer's con-
26 duct does not amount to gross negligence that is the proximate
27 cause of the injury or damage. As used in this subdivision,

1 "gross negligence" means conduct so reckless as to demonstrate a
2 substantial lack of concern for whether an injury results.

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

6 (4) SUBSECTION (2) APPLIES TO ANY PHYSICIAN WHO PROVIDES
7 HEALTH CARE SERVICES IN A HOSPITAL OPERATED BY THE DEPARTMENT OF
8 CORRECTIONS, REGARDLESS OF WHETHER THE PHYSICIAN PROVIDES THOSE
9 HEALTH CARE SERVICES AS AN EMPLOYEE OF THE DEPARTMENT OF CORREC-
10 TIONS OR PURSUANT TO A SERVICES CONTRACT OR OTHER TEMPORARY OR
11 NONEMPLOYEE ARRANGEMENT.

12 (5) ~~(4)~~ This act does not grant immunity to a governmental
13 agency with respect to the ownership or operation of a hospital
14 or county medical care facility or to the agents or employees of
15 such hospital or county medical care facility. As used in this
16 subsection:

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

21 (b) "Hospital" means a facility offering inpatient, over-
22 night care, and services for observation, diagnosis, and active
23 treatment of an individual with a medical, surgical, obstetric,
24 chronic, or rehabilitative condition requiring the daily direc-
25 tion or supervision of a physician. The term does not include a
26 hospital owned or operated by the department of mental health or
27 a hospital operated by the department of corrections.

1 (6) ~~-(5)-~~ Judges, legislators, and the elective or highest
2 appointive executive officials of all levels of government are
3 immune from tort liability for injuries to persons or damages to
4 property whenever they are acting within the scope of their judi-
5 cial, legislative, or executive authority.