

Act No. 241
Public Acts of 1999
Approved by the Governor
December 28, 1999
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December 28, 1999
EFFECTIVE DATE: December 28, 1999

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999**

Introduced by Reps. Shulman, Kukuk, Tabor, Kuipers, Voorhees, Hart, Kowall, Raczkowski, Bisbee, Richner, LaSata and Gosselin

ENROLLED HOUSE BILL No. 4588

AN ACT 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 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," by amending section 7 (MCL 691.1407), as amended by 1996 PA 143, and by adding section 7a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 7. (1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

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

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

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

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

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

(4) Except as provided in section 7a, this act does not grant immunity to a governmental agency with respect to the ownership or operation of a hospital or county medical care facility or to the agents or employees of such hospital or county medical care facility. As used in this subsection:

(a) "County medical care facility" means that term as defined in section 20104 of the public health code, 1978 PA 368, MCL 333.20104.

(b) "Hospital" means a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician. The term does not include a hospital owned or operated by the department of community health or a hospital operated by the department of corrections.

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

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

Sec. 7a. (1) Except as otherwise provided in this section and section 13, a political subdivision other than a municipal corporation engaged in the exercise or discharge of a governmental function is immune from liability in an action to recover damages resulting directly or indirectly from a computer date failure, including, but not limited to, an action based on an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure or an action based on section 2, 3, 5, 6, or 7.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a political subdivision other than a municipal corporation, each volunteer acting on behalf of a political subdivision other than a municipal corporation, and each member of a board, council, commission, or statutorily created task force of a political subdivision other than a municipal corporation is immune from liability in an action to recover damages resulting directly or indirectly from a computer date failure, including, but not limited to, an action based on an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure or an action based on section 2, 3, 5, 6, or 7 if all of the following are met:

(a) The injury or damage is caused by the officer, employee, or member while in the course of employment or service or by the volunteer while acting on behalf of the political subdivision other than a municipal corporation.

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

(c) The political subdivision other than a municipal corporation is engaged in the exercise or discharge of a governmental function.

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

(3) Except as provided in subsection (6), a governmental agency is immune from liability in an action to recover damages with respect to the ownership or operation of a hospital or county medical facility, as those terms are defined in section 7(4), resulting directly or indirectly from a computer date failure, including, but not limited to, an action based on an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure or an action based on another section of this act.

(4) Except as provided in subsection (6), without regard to the discretionary or ministerial nature of the conduct in question, each governmental agency officer and employee, each volunteer acting on behalf of a governmental agency, and each member of a governmental agency board, council, commission, or statutorily created task force is immune from liability in an action to recover damages with respect to the ownership or operation of a hospital or county medical facility, as those terms are defined in section 7(4), resulting directly or indirectly from a computer date failure, including, but not limited to, an action based on an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure or an action based on a section of this act if all of the following are met:

(a) The damage is caused by the officer, employee, or member while in the course of employment or service or by the volunteer while acting on behalf of the governmental agency.

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

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

(5) This section shall not be construed as modifying or restricting the immunity of a governmental agency otherwise provided in this act. This section does not limit either of the following:

(a) The authority of a political subdivision other than a municipal corporation to enter into an agreement that waives or limits its immunity described in subsection (1) and that contains provisions the political subdivision other than a municipal corporation finds appropriate on the issue of its liability, damages, or both for computer date failure.

(b) The authority of a governmental agency to enter into an agreement that waives or limits its immunity described in subsection (3) and that contains provisions the governmental agency finds appropriate on the issue of its liability, damages, or both for computer date failure.

(6) This section does not apply to an action to recover damages for a wrongful death or injury to a person resulting from a computer date failure.

(7) For purposes of this section, the terms "political subdivision" and "governmental agency" include a municipal health facilities corporation incorporated under the municipal health facilities corporations act, 1987 PA 230, MCL 331.1101 to 331.1507.

(8) As used in this section:

(a) "Computer" means a high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.

(b) "Computer date failure" means a malfunction, including, but not limited to, the malfunction of an electronic or mechanical device or the inability of a computer, a computer network, a computer program, computer software, an embedded chip, or a computer system to accurately store, process, receive, or transmit data, that is caused directly or indirectly by the failure of a computer, a computer network, a computer program, computer software, an embedded chip, or a computer system to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times in the years 1999 and 2000 and beyond.

(c) "Computer network" means an interconnection of 2 or more computers or computer systems by satellite, microwave, line, cable, wiring, or other communication medium with the capability to transmit information among the computers or computer systems.

(d) "Computer program" means an ordered set of data-coded instructions or statements that when executed by a computer cause the computer system to process data or perform specific functions.

(e) "Computer software" means a set of computer programs, procedures, and associated documentation related to the operation of a computer, computer system, or computer network.

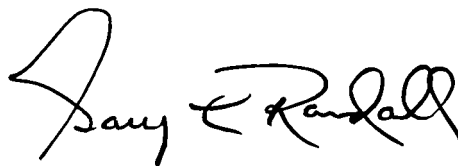
(f) "Computer system" means a combination of a computer or a computer network with the documentation, computer software, or physical facilities supporting the computer or computer network.

(g) "Embedded chip" means a single or multiple microprocessor chip that operates in conjunction with software, including software on the chip itself, and that in some way controls a device or equipment, including, but not limited to, a computer or other electronic or mechanical device.

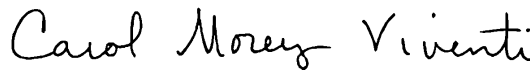
(9) This section is repealed January 1, 2003.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4469 and House Bill No. 4587 of the 90th Legislature are enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.