

# HOUSE BILL No. 5971

June 3, 2004, Introduced by Reps. Ruth Johnson, Vander Veen, Rocca, Nitz, Shaffer, Garfield, Pappageorge and Taub and referred to the Committee on Judiciary.

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 sections 1 and 7 (MCL 691.1401 and 691.1407), section 1 as amended by 2001 PA 131 and section 7 as amended by 2000 PA 318.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. As used in this act:

2       (a) "Governmental agency" means the state or a political

1 subdivision.

2 (b) "Governmental function" means an activity that is  
3 expressly or impliedly mandated or authorized by constitution,  
4 statute, local charter or ordinance, or other law. Governmental  
5 function includes an activity, as directed or assigned by his or  
6 her public employer for the purpose of public safety, performed  
7 on public or private property by a sworn law enforcement officer  
8 within the scope of the law enforcement officer's authority.

9 (c) "Gross negligence" means conduct so reckless as to  
10 demonstrate a substantial lack of concern for whether an injury  
11 results.

12 (d) "Highway" means a public highway, road, or street that is  
13 open for public travel and includes bridges, sidewalks,  
14 trailways, crosswalks, and culverts on the highway. The term  
15 highway does not include alleys, trees, and utility poles.

16 (e) ~~(a)~~ "Municipal corporation" means a city, village, or  
17 township or a combination of 2 or more of these when acting  
18 jointly.

19 (f) ~~(b)~~ "Political subdivision" means a municipal  
20 corporation, county, county road commission, school district,  
21 community college district, port district, metropolitan district,  
22 or transportation authority or a combination of 2 or more of  
23 these when acting jointly; a district or authority authorized by  
24 law or formed by 1 or more political subdivisions; or an agency,  
25 department, court, board, or council of a political subdivision.

26 (g) ~~(c)~~ "State" means the state of Michigan and its  
27 agencies, departments, commissions, courts, boards, councils, and

1 statutorily created task forces and includes every public  
 2 university and college of the state, whether established as a  
 3 constitutional corporation or otherwise.

4 ~~(d) "Governmental agency" means the state or a political~~  
 5 ~~subdivision.~~

6 ~~—— (e) "Highway" means a public highway, road, or street that is~~  
 7 ~~open for public travel and includes bridges, sidewalks,~~  
 8 ~~trailways, crosswalks, and culverts on the highway. The term~~  
 9 ~~highway does not include alleys, trees, and utility poles.~~

10 ~~—— (f) "Governmental function" is an activity that is expressly~~  
 11 ~~or impliedly mandated or authorized by constitution, statute,~~  
 12 ~~local charter or ordinance, or other law. Governmental function~~  
 13 ~~includes an activity, as directed or assigned by his or her~~  
 14 ~~public employer for the purpose of public safety, performed on~~  
 15 ~~public or private property by a sworn law enforcement officer~~  
 16 ~~within the scope of the law enforcement officer's authority.~~

17 ~~(h) —(g)— "Township" includes charter township.~~

18 ~~(i) —(h)— "Volunteer" means an individual who to whom 1 or~~  
 19 **more of the following apply:**

20 **(i) The individual** is specifically designated as a volunteer  
 21 and ~~who~~ is acting solely on behalf of a governmental agency.

22 **(ii) The individual is licensed to practice 1 or more of the**  
 23 **following, is acting within the scope of the license, and is**  
 24 **assisting, whether for pecuniary compensation or not, law**  
 25 **enforcement officers while they are engaged in tactical**  
 26 **operations:**

27 **(A) Medicine, osteopathic medicine and surgery, or as a**

1 registered professional nurse, under article 15 of the public  
2 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

3 (B) As an emergency medical technician, emergency medical  
4 technician specialist, or paramedic under part 209 of the public  
5 health code, 1978 PA 368, MCL 333.20901 to 333.20979.

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

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

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

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

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

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

8 (4) ~~Except as provided in section 7a, this~~ **This** act does  
9 not grant immunity to a governmental agency or an employee or  
10 agent of a governmental agency with respect to providing medical  
11 care or treatment to a patient, except medical care or treatment  
12 provided to a patient in a hospital owned or operated by the  
13 department of community health or a hospital owned or operated by  
14 the department of corrections **and except care or treatment**  
15 **provided by a volunteer as defined in section 1(i)(ii).**

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

21 (6) A guardian ad litem is immune from civil liability for an  
22 injury to a person or damage to property if he or she is acting  
23 within the scope of his or her authority as guardian ad litem.  
24 This subsection applies to actions filed before, on, or after May  
25 1, 1996.