

HOUSE BILL No. 5674

December 9, 2009, Introduced by Reps. Hammel and Dean 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 section 7 (MCL 691.1407), as amended by 2005 PA 318.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) Except as otherwise provided in this act, a

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

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

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

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

22 (c) The officer's, employee's, member's, or volunteer's
23 conduct does not amount to gross negligence that is the proximate
24 cause of the injury or damage.

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

27 (4) This act does not grant immunity to a governmental agency

1 or an employee or agent of a governmental agency with respect to
2 providing medical care or treatment to a patient, except medical
3 care or treatment provided to a patient in **ANY OF THE FOLLOWING**
4 **CIRCUMSTANCES:**

5 (A) **IN** a hospital owned or operated by the department of
6 community health. ~~or a hospital owned or operated by the department~~
7 ~~of corrections and except care or treatment provided by~~

8 (B) **WHILE THE PATIENT IS DETAINED IN A STATE CORRECTIONAL**
9 **FACILITY OR A JAIL.**

10 (C) **BY** an uncompensated search and rescue operation medical
11 assistant or tactical operation medical assistant.

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

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

22 (7) As used in this section:

23 (a) "Gross negligence" means conduct so reckless as to
24 demonstrate a substantial lack of concern for whether an injury
25 results.

26 (B) **"JAIL" MEANS THAT TERM AS DEFINED IN SECTION 62 OF THE**
27 **CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.262.**

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

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

10 (E) "STATE CORRECTIONAL FACILITY" MEANS THAT TERM AS DEFINED
11 IN SECTION 62 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL
12 791.262.

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

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

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

22 (iii) Training for the team.

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

27 (i) 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 (ii) 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.