

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 4044**

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
(MCL 600.101 to 600.9948) by adding sections 2965, 2966, and  
2967.

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

1        SEC. 2965. THE COMMON LAW DOCTRINE THAT PRECLUDES A FIRE-  
2 FIGHTER OR POLICE OFFICER FROM RECOVERING DAMAGES FOR INJURIES  
3 ARISING FROM THE NORMAL, INHERENT, AND FORESEEABLE RISKS OF HIS  
4 OR HER PROFESSION IS ABOLISHED.

5        SEC. 2966. THE STATE, A POLITICAL SUBDIVISION OF THIS  
6 STATE, OR A GOVERNMENTAL AGENCY, GOVERNMENTAL OFFICER OR EMPLOY-  
7 EE, VOLUNTEER ACTING ON BEHALF OF A GOVERNMENT, AND MEMBER OF A  
8 GOVERNMENTALLY CREATED BOARD, COUNCIL, COMMISSION, OR TASK FORCE  
9 ARE IMMUNE FROM TORT LIABILITY FOR AN INJURY TO A FIREFIGHTER OR  
10 POLICE OFFICER THAT ARISES FROM THE NORMAL, INHERENT, AND

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1 FORESEEABLE RISKS OF THE FIREFIGHTER'S OR POLICE OFFICER'S

2 PROFESSION. THIS SECTION SHALL NOT BE CONSTRUED TO AFFECT AN  
INDIVIDUAL'S RIGHTS TO BENEFITS PROVIDED UNDER THE WORKER'S  
DISABILITY COMPENSATION ACT OF 1969, 1969 PA 317, MCL 418.101 TO  
418.941.

3 [SEC. 2967. (1) EXCEPT AS PROVIDED IN SECTION 2966, A

4 FIREFIGHTER OR POLICE OFFICER WHO SEEKS TO RECOVER DAMAGES FOR

5 INJURY OR DEATH ARISING FROM THE NORMAL, INHERENT, AND FORESEEABLE

6 RISKS OF HIS OR HER PROFESSION WHILE ACTING IN HIS OR HER OFFICIAL

7 CAPACITY MUST PROVE THAT 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES

8 ARE PRESENT:

9 (A) AN INJURY OR RESULTING DEATH THAT IS A BASIS FOR THE CAUSE

10 OF ACTION WAS CAUSED BY A PERSON'S CONDUCT AND THAT CONDUCT IS 1 OR

11 MORE OF THE FOLLOWING:

12 (i) GROSSLY NEGLIGENT.

13 (ii) WANTON.

14 (iii) WILLFUL.

15 (iv) INTENTIONAL.

16 (v) CONDUCT THAT RESULTS IN A CONVICTION, GUILTY PLEA, OR PLEA

17 OF NO CONTEST TO A CRIME UNDER STATE OR FEDERAL LAW, OR A LOCAL

18 CRIMINAL ORDINANCE THAT SUBSTANTIALLY CORRESPONDS TO A CRIME UNDER

19 STATE LAW.

20 (B) THE CAUSE OR ACTION IS A PRODUCT LIABILITY ACTION THAT IS

21 BASED ON FIREFIGHTING OR POLICE OFFICER EQUIPMENT THAT FAILED WHILE

22 IT WAS BEING USED BY THE FIREFIGHTER OR POLICE OFFICER DURING THE

23 LEGALLY REQUIRED OR AUTHORIZED DUTIES OF THE PROFESSION, WHICH

24 DUTIES WERE PERFORMED DURING AN EMERGENCY SITUATION AND WHICH DUTIES

25 SUBSTANTIALLY INCREASED THE LIKELIHOOD OF THE RESULTING DEATH OR

26 INJURY, AND ALL OF THE FOLLOWING ARE TRUE:

27 (i) THE NEGLIGENT PERSON IS NOT SOMEONE WHOSE ACT OR OMISSION

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1 RESULTED IN THE FIREFIGHTER'S OR POLICE OFFICER'S PRESENCE AT THE  
2 PLACE WHERE THE INJURY OCCURRED; OR THE PERSON IS SOMEONE WHOSE ACT  
3 OR OMISSION RESULTED IN THE FIREFIGHTER'S OR POLICE OFFICER'S  
4 PRESENCE AT THE PLACE WHERE THE INJURY OCCURRED AND THE ACTION IS  
5 BASED ON AN ACT BY THAT PERSON THAT OCCURRED AFTER THE FIREFIGHTER  
6 OR POLICE OFFICER ARRIVED AT THE PLACE WHERE THE INJURY OCCURRED.

7       (ii) THE NEGLIGENT PERSON IS NOT SOMEONE FROM WHOM THE  
8 FIREFIGHTER OR POLICE OFFICER HAD SOUGHT OR OBTAINED ASSISTANCE OR  
9 OWNER OR TENANT OF THE PROPERTY FROM WHERE THE FIREFIGHTER OR POLICE  
10 IS NOT AN OFFICER SOUGHT OR OBTAINED ASSISTANCE.

11       (iii) THE NEGLIGENT PERSON IS NOT SOMEONE WHO IS AN OWNER OR  
12 TENANT OF THE PROPERTY THAT THE FIREFIGHTER OR POLICE OFFICER WAS ON  
13 IN HIS OR HER OFFICIAL CAPACITY; OR THE PERSON IS SOMEONE WHO IS AN  
14 OWNER OR TENANT OF THE PROPERTY THAT THE FIREFIGHTER OR POLICE  
15 OFFICER WAS ON IN HIS OR HER OFFICIAL CAPACITY AND THE ACTION IS  
16 BASED ON AN ACT BY THAT PERSON THAT OCCURRED AFTER THE FIREFIGHTER  
17 OR POLICE OFFICER ARRIVED AT THE PLACE WHERE THE INJURY OCCURRED.

18       (C) AN INJURY OR RESULTING DEATH THAT IS A BASIS FOR THE CAUSE  
19 OF ACTION WAS CAUSED BY A PERSON'S ORDINARY NEGLIGENCE AND ALL OF  
20 THE FOLLOWING ARE TRUE:

21       (i) THE NEGLIGENT PERSON IS NOT SOMEONE WHOSE ACT OR OMISSION  
22 RESULTED IN THE FIREFIGHTER'S OR POLICE OFFICER'S PRESENCE AT THE  
23 PLACE WHERE THE INJURY OCCURRED; OR THE PERSON IS SOMEONE WHOSE ACT  
24 OR OMISSION RESULTED IN THE FIREFIGHTER'S OR POLICE OFFICER'S  
25 PRESENCE AT THE PLACE WHERE THE INJURY OCCURRED AND THE ACTION IS  
26 BASED ON AN ACT BY THAT PERSON THAT OCCURRED AFTER THE FIREFIGHTER

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1 OR POLICE OFFICER ARRIVED AT THE PLACE WHERE THE INJURY OCCURRED.

2 (ii) THE NEGLIGENT PERSON IS NOT SOMEONE FROM WHOM THE

3 FIREFIGHTER OR POLICE OFFICER HAD SOUGHT OR OBTAINED ASSISTANCE OR

4 IS NOT AN OWNER OR TENANT OF THE PROPERTY FROM WHERE THE FIREFIGHTER

5 OR POLICE OFFICER SOUGHT OR OBTAINED ASSISTANCE.

6 (iii) THE NEGLIGENT PERSON IS NOT SOMEONE WHO IS AN OWNER OR

7 TENANT OF THE PROPERTY THAT THE FIREFIGHTER OR POLICE OFFICER WAS ON

8 IN HIS OR HER OFFICIAL CAPACITY; OR THE PERSON IS SOMEONE WHO IS AN

9 OWNER OR TENANT OF THE PROPERTY THAT THE FIREFIGHTER OR POLICE

10 OFFICER WAS ON IN HIS OR HER OFFICIAL CAPACITY AND THE ACTION IS

11 BASED ON AN ACT BY THAT PERSON THAT OCCURRED AFTER THE FIREFIGHTER

12 OR POLICE OFFICER ARRIVED AT THE PLACE WHERE THE INJURY OCCURRED.

13 (iv) THE FIREFIGHTER OR POLICE OFFICER WAS ENGAGED IN 1 OR MORE  
14 OF THE FOLLOWING:

15 (A) OPERATING, OR RIDING IN OR ON, A MOTOR VEHICLE THAT IS

16 BEING OPERATED IN CONFORMITY WITH THE LAWS APPLICABLE TO THE GENERAL

17 PUBLIC.

18 (B) AN ACT INVOLVING THE LEGALLY REQUIRED OR AUTHORIZED DUTIES

19 OF THE PROFESSION THAT DID NOT SUBSTANTIALLY INCREASE THE LIKELIHOOD

20 OF THE RESULTING DEATH OR INJURY. THE COURT SHALL NOT CONSIDER THE

21 FIREFIGHTER OR POLICE OFFICER TO HAVE BEEN ENGAGED IN AN ACT THAT

22 SUBSTANTIALLY INCREASED THE LIKELIHOOD OF DEATH OR INJURY IF THE

23 INJURY OCCURRED WITHIN A HIGHWAY RIGHT-OF-WAY, IF THERE WAS

24 EMERGENCY LIGHTING ACTIVATED AT THE SCENE, AND IF THE FIREFIGHTER OR

25 POLICE OFFICER WAS ENGAGED IN EMERGENCY MEDICAL SERVICES, ACCESSING

26 A FIRE HYDRANT, TRAFFIC CONTROL, MOTORIST ASSISTANCE, OR A TRAFFIC

27 STOP FOR A POSSIBLE VIOLATION OF LAW.

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the Senate September 23, 1998

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1       (2) THIS SECTION SHALL NOT BE CONSTRUED TO AFFECT A RIGHT,  
2 REMEDY, PROCEDURE, OR LIMITATION OF ACTION THAT IS OTHERWISE  
3 PROVIDED BY STATUTE OR COMMON LAW.

4       (3) AS USED IN THIS SECTION:

5       (A) "GROSSLY NEGLIGENT" MEANS CONDUCT SO RECKLESS AS TO  
6 DEMONSTRATE A SUBSTANTIAL LACK OF CONCERN FOR WHETHER INJURY  
7 RESULTS.

8       (B) "PERSON" MEANS AN INDIVIDUAL OR A PARTNERSHIP, CORPORATION,  
9 LIMITED LIABILITY COMPANY, ASSOCIATION, OR OTHER LEGAL ENTITY.

10       (C) "PRODUCT LIABILITY ACTION" MEANS THAT TERM AS DEFINED IN  
11 SECTION 2945.

Enacting section 1. Sections 2965, 2966, and 2967 of the  
revised judicature act of 1961, 1961 PA 236, MCL 600.2965, 600.2966,  
and 600.2967, as added by this amendatory act, do not apply to a  
cause of action arising before the effective date of this amendatory  
act.]