

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4589**

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, 2, and 2a (MCL 691.1401, 691.1402, and 691.1402a), section 1 as amended by 2001 PA 131 and section 2 as amended and section 2a as added by 1999 PA 205.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (A) "GOVERNMENTAL AGENCY" MEANS THIS STATE OR A POLITICAL
3 SUBDIVISION.

4 (B) "GOVERNMENTAL FUNCTION" MEANS AN ACTIVITY THAT IS
5 EXPRESSLY OR IMPLIEDLY MANDATED OR AUTHORIZED BY CONSTITUTION,
6 STATUTE, LOCAL CHARTER OR ORDINANCE, OR OTHER LAW. GOVERNMENTAL
7 FUNCTION INCLUDES AN ACTIVITY PERFORMED ON PUBLIC OR PRIVATE
8 PROPERTY BY A SWORN LAW ENFORCEMENT OFFICER WITHIN THE SCOPE OF THE
9 LAW ENFORCEMENT OFFICER'S AUTHORITY, AS DIRECTED OR ASSIGNED BY HIS
10 OR HER PUBLIC EMPLOYER FOR THE PURPOSE OF PUBLIC SAFETY.

11 (C) "HIGHWAY" MEANS A PUBLIC HIGHWAY, ROAD, OR STREET THAT IS
12 OPEN FOR PUBLIC TRAVEL. HIGHWAY INCLUDES A BRIDGE, SIDEWALK,
13 TRAILWAY, CROSSWALK, OR CULVERT ON THE HIGHWAY. HIGHWAY DOES NOT
14 INCLUDE AN ALLEY, TREE, OR UTILITY POLE.

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

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

25 (F) "SIDEWALK", EXCEPT AS USED IN SUBDIVISION (C), MEANS A
26 PAVED PUBLIC SIDEWALK INTENDED FOR PEDESTRIAN USE SITUATED OUTSIDE
27 OF AND ADJACENT TO THE IMPROVED PORTION OF A HIGHWAY DESIGNED FOR

1 **VEHICULAR TRAVEL.**

2 (G) ~~(e)~~ "State" means ~~the~~ **THIS** state of ~~Michigan~~ and its
3 agencies, departments, commissions, courts, boards, councils, and
4 statutorily created task forces. ~~and~~ **STATE** includes ~~every~~ **A** public
5 university ~~and~~ **OR** college of ~~the~~ **THIS** state, whether established as
6 a constitutional corporation or otherwise.

7 ~~—— (d) "Governmental agency" means the state or a political~~
8 ~~subdivision.~~

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

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

20 (H) ~~(g)~~ "Township" ~~includes~~ **MEANS A GENERAL LAW TOWNSHIP OR A**
21 charter township.

22 (I) ~~(h)~~ "Volunteer" means an individual who is specifically
23 designated as a volunteer and who is acting solely on behalf of a
24 governmental agency.

25 Sec. 2. (1) ~~Except as otherwise provided in section 2a, each~~
26 **EACH** governmental agency having jurisdiction over a highway shall
27 maintain the highway in reasonable repair so that it is reasonably

safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL 224.21. ~~The~~ **EXCEPT AS PROVIDED IN SECTION 2A, THE** duty of ~~the~~ **A GOVERNMENTAL AGENCY** to ~~state and the county road commissions~~ repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. A judgment against the state based on a claim arising under this section from acts or omissions of the state transportation department is payable only from restricted funds appropriated to the state transportation department or funds provided by its insurer.

(2) A MUNICIPAL CORPORATION HAS NO DUTY TO REPAIR OR MAINTAIN, AND IS NOT LIABLE FOR INJURIES OR DAMAGES ARISING FROM, A PORTION OF A COUNTY OR STATE HIGHWAY.

(3) ~~(2)~~—If the state transportation department contracts with another governmental agency to perform work on a state trunk line highway, an action brought under this section for tort liability arising out of the performance of that work shall be brought only against the state transportation department under the same

1 circumstances and to the same extent as if the work had been
2 performed by employees of the state transportation department. The
3 state transportation department has the same defenses to the action
4 as it would have had if the work had been performed by its own
5 employees. If an action described in this subsection could have
6 been maintained against the state transportation department, it
7 shall not be maintained against the governmental agency that
8 performed the work for the state transportation department. The
9 governmental agency also has the same defenses that could have been
10 asserted by the state transportation department had the action been
11 brought against the state transportation department.

12 (4) ~~(3)~~—The contractual undertaking of a governmental agency
13 to maintain a state trunk line highway confers contractual rights
14 only on the state transportation department and does not confer
15 third party beneficiary or other contractual rights in any other
16 person to recover damages to person or property from that
17 governmental agency. This subsection does not relieve the state
18 transportation department of liability it may have, under this
19 section, regarding that highway.

20 (5) ~~(4)~~—The duty imposed by this section on a governmental
21 agency is limited by sections 81131 and 82124 of the natural
22 resources and environmental protection act, 1994 PA 451, MCL
23 324.81131 and 324.82124.

24 Sec. 2a. ~~(1) Except as otherwise provided by this section, a~~
25 ~~municipal corporation has no duty to repair or maintain, and is not~~
26 ~~liable for injuries arising from, a portion of a county highway~~
27 ~~outside of the improved portion of the highway designed for~~

~~vehicular travel, including a sidewalk, trailway, crosswalk, or
other installation. This subsection does not prevent or limit a
municipal corporation's liability if both of the following are
true:~~

~~—— (a) At least 30 days before the occurrence of the relevant
injury, death, or damage, the municipal corporation knew or, in the
exercise of reasonable diligence, should have known of the
existence of a defect in a sidewalk, trailway, crosswalk, or other
installation outside of the improved portion of the highway
designed for vehicular travel.~~

~~—— (b) The defect described in subdivision (a) is a proximate
cause of the injury, death, or damage.~~

~~—— (2) A discontinuity defect of less than 2 inches creates a
rebuttable inference that the municipal corporation maintained the
sidewalk, trailway, crosswalk, or other installation outside of the
improved portion of the highway designed for vehicular travel in
reasonable repair.~~

(1) A MUNICIPAL CORPORATION IN WHICH A SIDEWALK IS INSTALLED
ADJACENT TO A MUNICIPAL, COUNTY, OR STATE HIGHWAY SHALL MAINTAIN
THE SIDEWALK IN REASONABLE REPAIR.

(2) A MUNICIPAL CORPORATION IS NOT LIABLE FOR BREACH OF A DUTY
TO MAINTAIN A SIDEWALK UNLESS THE PLAINTIFF PROVES THAT AT LEAST 30
DAYS BEFORE THE OCCURRENCE OF THE RELEVANT INJURY, DEATH, OR
DAMAGE, THE MUNICIPAL CORPORATION KNEW OR, IN THE EXERCISE OF
REASONABLE DILIGENCE, SHOULD HAVE KNOWN OF THE EXISTENCE OF THE
DEFECT IN THE SIDEWALK.

(3) IN A CIVIL ACTION, A MUNICIPAL CORPORATION THAT HAS A DUTY

1 TO MAINTAIN A SIDEWALK UNDER SUBSECTION (1) IS PRESUMED TO HAVE
2 MAINTAINED THE SIDEWALK IN REASONABLE REPAIR. THIS PRESUMPTION MAY
3 ONLY BE REBUTTED BY EVIDENCE OF FACTS SHOWING THAT A PROXIMATE
4 CAUSE OF THE INJURY WAS 1 OR BOTH OF THE FOLLOWING:

5 (A) A VERTICAL DISCONTINUITY DEFECT OF 2 INCHES OR MORE IN THE
6 SIDEWALK.

7 (B) A DANGEROUS CONDITION IN THE SIDEWALK ITSELF OF A
8 PARTICULAR CHARACTER OTHER THAN SOLELY A VERTICAL DISCONTINUITY.

9 (4) WHETHER A PRESUMPTION UNDER SUBSECTION (3) HAS BEEN
10 REBUTTED IS A QUESTION OF LAW FOR THE COURT.

11 (5) ~~(3)~~—A municipal corporation's liability under subsection
12 (1) is limited by section 81131 of the natural resources and
13 environmental protection act, 1994 PA 451, MCL 324.81131.