

HOUSE BILL No. 6168

September 30, 1992, Introduced by Rep. Nye and referred to the Committee on Transportation.

A bill to amend section 2 of Act No. 170 of the Public Acts of 1964, entitled as amended

"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,"

as amended by Act No. 278 of the Public Acts of 1990, being section 691.1402 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2 of Act No. 170 of the Public Acts of
2 1964, as amended by Act No. 278 of the Public Acts of 1990, being

1 section 691.1402 of the Michigan Compiled Laws, is amended to
2 read as follows:

3 Sec. 2. (1) Each governmental agency having jurisdiction
4 over any highway shall maintain the highway in reasonable repair
5 so that it is reasonably safe and convenient for public travel.
6 Any person sustaining bodily injury or damage to his or her prop-
7 erty by reason of failure of any governmental agency to keep any
8 highway under its jurisdiction in reasonable repair, and in con-
9 dition reasonably safe and fit for travel, may recover the dam-
10 ages suffered by him or her from the governmental agency. AN
11 ACTION FOR BODILY INJURY OR PROPERTY DAMAGE OR BOTH SHALL NOT BE
12 MAINTAINED AGAINST THE GOVERNMENTAL AGENCY HAVING JURISDICTION
13 OVER A HIGHWAY UNLESS THE FAILURE OF THE GOVERNMENTAL AGENCY TO
14 KEEP THE HIGHWAY IN REASONABLE REPAIR AND IN A CONDITION REASON-
15 ABLY SAFE AND FIT FOR VEHICULAR TRAVEL WAS DUE TO THE GROSS NEG-
16 LIGENCE OF THE GOVERNMENTAL AGENCY AND THAT GROSS NEGLIGENCE IS
17 THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE. AS USED IN
18 THIS SECTION, "GROSS NEGLIGENCE" MEANS CONDUCT SO WILLFUL AND
19 WANTON AS TO EXHIBIT A RECKLESS DISREGARD FOR THE SAFETY OF
20 OTHERS. The liability, procedure and remedy as to county roads
21 under the jurisdiction of a county road commission shall be as
22 provided in section 21 of chapter IV of Act No. 283 of the Public
23 Acts of 1909, as amended, being section 224.21 of the Michigan
24 Compiled Laws. The duty of the state and the county road commis-
25 sions to repair and maintain highways, and the liability there-
26 for, shall extend only to the improved portion of the highway
27 designed for vehicular travel and shall not include sidewalks,

1 crosswalks, or any other installation outside of the improved
2 portion of the highway designed for vehicular travel. No action
3 shall be brought against the state under this section except for
4 injury or loss suffered on or after July 1, 1965. Any judgment
5 against the state based on a claim arising under this section
6 from acts or omissions of the state transportation department
7 shall be payable only from restricted funds appropriated to the
8 state transportation department or funds provided by its
9 insurer.

10 (2) If the state transportation department contracts with
11 another governmental agency to perform work on state trunkline
12 highways, an action brought under this section for tort liability
13 arising out of the performance of that work shall be brought only
14 against the state transportation department under the same cir-
15 cumstances and to the same extent as if the work had been per-
16 formed by employees of the state transportation department. The
17 state transportation department shall have the same defenses to
18 the ~~suit~~ ACTION as it would have had if the work had been per-
19 formed by its own employees. If an action described in this sub-
20 section could have been maintained against the state transporta-
21 tion department, it may not be maintained against the governmen-
22 tal agency that performed the work for the state transportation
23 department. The governmental agency also shall have the same
24 defenses which could have been asserted by the state transporta-
25 tion department had the action been brought against the state
26 transportation department.

1 (3) The contractual undertaking of a governmental agency to
2 maintain a state trunkline highway confers contractual rights
3 only on the state transportation department and does not confer
4 third party beneficiary or other contractual rights in any other
5 person to recover damages to person or property from that govern-
6 mental agency. This subsection does not relieve the state trans-
7 portation department of any liability it may have, under this
8 section, regarding that highway.