



# HOUSE BILL No. 5635

June 9 1994 Introduced by Reps Stille Hammerstrom Hill Walberg, Middleton, Llewellyn Voorhees, Fitzgerald Rhead Bobier Gustafson Whyman Dalman Galloway Dolan, London Bender Kukuk Gnodtke, Brackenridge Johnson LeTarte, Horton, McManus, Gernaat and Shugars and referred to the Committee on Judiciary

A bill to amend the title and sections 1 2 and 4 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

section 1 as amended by Act No 175 of the Public Acts of 1986 and section 2 as amended by Act No 278 of the Public Acts of 1990, being sections 691 1401 691 1402, and 691 1404 of the Michigan Compiled Laws and to add sections 2a and 2b

7	TITLE
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23           Sec 1    As used in this act

05140 93 \*\*

1 (B) GOVERNMENTAL AGENCY MEANS THE STATE A POLITICAL  
2 SUBDIVISION OR A MUNICIPAL CORPORATION

3 (C) GOVERNMENTAL FUNCTION' IS AN ACTIVITY THAT IS EXPRESSLY  
4 OR IMPLIEDLY MANDATED OR AUTHORIZED BY CONSTITUTION, STATUTE  
5 LOCAL CHARTER OR ORDINANCE, OR OTHER LAW

6 (D) "HIGHWAY MEANS A PUBLIC HIGHWAY ROAD OR STREET THAT  
7 IS OPEN FOR PUBLIC TRAVEL HIGHWAY INCLUDES BRIDGES SIDEWALKS  
8 CROSSWALKS, AND CULVERTS ON THE HIGHWAY HIGHWAY DOES NOT  
9 INCLUDE ALLEYS, PARKING LOTS, ROADSIDE REST AREAS, TREES OR  
10 UTILITY POLES

11 (E) IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR VEHICULAR  
12 TRAVEL" MEANS THE PHYSICAL STRUCTURE OF THE TRAVELED PORTION  
13 PAVED OR UNPAVED, OF THE ROADBED ACTUALLY DESIGNED FOR PUBLIC  
14 VEHICULAR TRAVEL BY WAY OF ILLUSTRATION, AND NOT LIMITATION  
15 IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR VEHICULAR TRAVEL  
16 DOES NOT INCLUDE SHOULDERS, CURBS, VEGETATION, TREES, UTILITY  
17 POLES, MEDIANS, SIDEWALKS, CROSSWALKS, CULVERTS, GUARDRAILS, BAR-  
18 RIERS, TRAFFIC CONTROL DEVICES, SIGNS, LIGHTING, OR OTHER INSTAL-  
19 LATION OR CONDITION LOCATED OUTSIDE OF THE IMPROVED PORTION OF  
20 THE HIGHWAY DESIGNED FOR VEHICULAR TRAVEL

21 (F) JURISDICTION MEANS OWNERSHIP OF A HIGHWAY AS ESTAB-  
22 LISHED UNDER SECTIONS 1 TO 9 OF ACT NO 51 OF THE PUBLIC ACTS OF  
23 1951, BEING SECTIONS 247 651 TO 247 659 OF THE MICHIGAN COMPILED  
24 LAWS

25 (G) ~~-(a)-~~ Municipal corporation' means ~~-any-~~ A city, vil-  
26 lage, township, or charter township, or ~~-any-~~ A combination  
27 ~~-thereof-~~ OF ANY OF THESE, when acting jointly

1 (H) ~~(b)~~ Political subdivision means ~~any~~ A municipal  
 2 corporation county county road commission, township, charter  
 3 township, school district, community college district port dis-  
 4 trict, ~~or~~ metropolitan district, OR transportation authority  
 5 or ~~any~~ A combination ~~thereof~~ OF ANY OF THESE when acting  
 6 jointly ~~, and any~~ A district or authority authorized by law or  
 7 formed by 1 or more political subdivisions ~~, and any~~ OR AN  
 8 agency department, court, board or council of a political  
 9 subdivision

10 (I) ~~(c)~~ 'State means the state of Michigan and its agen-  
 11 cies, departments, commissions, courts, boards, councils, AND  
 12 statutorily created task forces ~~, and shall include every~~  
 13 STATE INCLUDES A public university ~~and~~ OR college of the state,  
 14 whether established as a constitutional corporation or  
 15 otherwise

16 ~~(d) "Governmental agency" means the state, political subdi-~~  
 17 ~~visions, and municipal corporations~~

18 ~~(e) "Highway" means every public highway, road, and street~~  
 19 ~~which is open for public travel and shall include bridges, side~~  
 20 ~~walks, crosswalks, and culverts on any highway The term highway~~  
 21 ~~does not include alleys, trees, and utility poles~~

22 ~~(f) "Governmental function" is an activity which is~~  
 23 ~~expressly or impliedly mandated or authorized by constitution,~~  
 24 ~~statute, local charter or ordinance, or other law~~

25 (J) ~~(g)~~ 'Volunteer means an individual who is specifi-  
 26 cally designated as ~~such~~ A VOLUNTEER and who is acting solely  
 27 on behalf of a governmental agency

1 (K) 'VERDICT MEANS THE TOTAL OF ALL OF THE FOLLOWING

2 (i) DAMAGES

3 (ii) INTEREST

4 (iii) FEES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY AND  
5 EXPERT FEES

6 (iv) COSTS

7 (v) AN UNCOLLECTIBLE AMOUNT REALLOCATED UNDER SECTION 6304

8 OF THE REVISED JUDICATURE ACT OF 1961, ACT NO 236 OF THE PUBLIC

9 ACTS OF 1961, BEING SECTION 600 6304 OF THE MICHIGAN COMPILED

10 LAWS

11 Sec 2 (1) ~~Each~~ SUBJECT TO SUBSECTIONS (3) AND (7), EACH

12 governmental agency having jurisdiction over ~~any~~ A highway

13 shall maintain the highway in reasonable repair so that it is

14 reasonably safe and convenient for public travel ~~Any~~ A person

15 sustaining bodily injury or damage to\*his or her property by

16 reason of failure of ~~any~~ A governmental agency to keep ~~any~~ A

17 highway under its jurisdiction in reasonable repair and in con-

18 dition reasonably safe and fit for travel may recover the dam-

19 ages suffered by him or her from the governmental agency A

20 PERSON SHALL NOT MAINTAIN A SEPARATE ACTION UNDER THIS SECTION

21 AGAINST AN EMPLOYEE OR AGENT OF A GOVERNMENTAL AGENCY

22 (2) The liability, procedure and remedy as to county roads

23 under the jurisdiction of a county road commission shall be as

24 provided in section 21 of chapter IV of Act No 283 of the Public

25 Acts of 1909, as amended, being section 224 21 of the Michigan

26 Compiled Laws

1       (3) The duty of the state and the county road commissions to  
 2 repair and maintain highways, and the liability ~~therefor, shall~~  
 3 ~~extend~~ FOR THAT DUTY EXTENDS only to the improved portion of  
 4 the highway designed for vehicular travel and ~~shall not include~~  
 5 ~~sidewalks, crosswalks or any other installation outside of the~~  
 6 ~~improved portion of the highway designed for vehicular travel~~  
 7 REQUIRES ONLY THAT IT BE REASONABLY SAFE AND FIT FOR PUBLIC  
 8 VEHICULAR TRAFFIC ~~No action shall be brought against the state~~  
 9 ~~under this section except for injury or loss suffered on or after~~  
 10 ~~July 1, 1965~~ Any

11       (4) A judgment against the state based on a claim arising  
 12 under this section from acts or omissions of the state transpor-  
 13 tation department ~~shall be~~ IS payable only from restricted  
 14 funds appropriated to the state transportation department or  
 15 funds provided by its insurer

16       (5) ~~(2)~~ If the state transportation department contracts  
 17 with another governmental agency to perform work on A state  
 18 trunkline ~~highways~~ HIGHWAY, an action brought under this sec-  
 19 tion for tort liability arising out of the performance of that  
 20 work shall be brought only against the state transportation  
 21 department under the same circumstances and to the same extent as  
 22 if the work had been performed by employees of the state trans-  
 23 portation department The state transportation department ~~shall~~  
 24 ~~have~~ HAS the same defenses to the suit as it would have had if  
 25 the work had been performed by its own employees If an action  
 26 described in this subsection could have been maintained against  
 27 the state transportation department, it may not be maintained

1 against the governmental agency that performed the work for the  
2 state transportation department The governmental agency also  
3 ~~shall have~~ HAS the same defenses ~~which~~ THAT could have been  
4 asserted by the state transportation department had the action  
5 been brought against the state transportation department

6 (6) ~~(3)~~ The contractual undertaking of a governmental  
7 agency to maintain a state trunkline highway confers contractual  
8 rights only on the state transportation department and does not  
9 confer third party beneficiary or other contractual rights in any  
10 other person to recover damages to person or property from that  
11 governmental agency This subsection does not relieve the state  
12 transportation department of ~~any~~ liability it may have, under  
13 this section regarding that highway

14 (7) ONLY A GOVERNMENTAL AGENCY THAT HAS JURISDICTION OF THE  
15 HIGHWAY AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE INJURY  
16 IS LIABLE IN AN ACTION UNDER THIS SECTION

17 SEC 2A (1) IN AN ACTION UNDER SECTION 2 AND SUBJECT TO  
18 SUBSECTION (3), THE VERDICT AMOUNT RECOVERABLE BY AN INDIVIDUAL  
19 PLAINTIFF FROM ALL GOVERNMENTAL AGENCIES SHALL NOT EXCEED THE  
20 LOWEST OF THE FOLLOWING THAT IS APPROPRIATE UNDER THE FACTS OF  
21 THAT ACTION

22 (A) NOT MORE THAN \$300 000 00 FOR EACH INDIVIDUAL  
23 PLAINTIFF

24 (B) NOT MORE THAN \$200,000 00 FOR AN INDIVIDUAL PLAINTIFF  
25 WHO WAS A DRIVER OR A PASSENGER IN THE FRONT SEAT OF A VEHICLE  
26 WAS 16 YEARS OF AGE OR OLDER, AND WAS NOT WEARING A SAFETY BELT  
27 AT THE TIME OF THE OCCURRENCE THE LIMITATION PRESCRIBED BY THIS

1 SUBDIVISION APPLIES REGARDLESS OF WHETHER THE PLAINTIFF'S FAILURE  
2 TO WEAR A SAFETY BELT WAS A PROXIMATE CAUSE OF THE INJURY

3 (C) NOT MORE THAN \$100,000 00 FOR AN INDIVIDUAL PLAINTIFF  
4 WHO WAS A DRIVER OF A VEHICLE AND WAS 16 YEARS OF AGE OR OLDER AT  
5 THE TIME OF THE OCCURRENCE THAT RESULTED IN THE INJURY IF, AT THE  
6 TIME OF THE OCCURRENCE THE DRIVER IS UNDER THE INFLUENCE OF  
7 INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE OR A COMBINATION  
8 OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE, OR HAS A BLOOD  
9 ALCOHOL CONTENT OF 0 07% OR MORE BY WEIGHT OF ALCOHOL THE LIMI-  
10 TATION PRESCRIBED BY THIS SUBDIVISION APPLIES REGARDLESS OF  
11 WHETHER THE DRIVER S CONDITION WAS A PROXIMATE CAUSE OF THE  
12 INJURY

13 (2) THE COURT OR COUNSEL FOR A PARTY IN AN ACTION UNDER SEC-  
14 TION 2 SHALL NOT ADVISE THE JURY OF THE LIMITATIONS PRESCRIBED BY  
15 THIS SECTION SUBJECT TO SECTION 2B, IF A LIMITATION PRESCRIBED  
16 BY THIS SECTION APPLIES THE COURT SHALL SET ASIDE THE VERDICT  
17 AMOUNT THAT IS IN EXCESS OF THE LIMITATION

18 (3) THE STATE TREASURER SHALL ADJUST THE LIMITATIONS PRE-  
19 SCRIBED BY THIS SECTION BY AN AMOUNT THE STATE TREASURER DETER-  
20 MINES AT THE END OF EACH CALENDAR YEAR TO REFLECT THE CUMULATIVE  
21 ANNUAL PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX

22 SEC 2B BEFORE THE COURT APPLIES A LIMITATION PRESCRIBED  
23 BY SECTION 2A TO A VERDICT AMOUNT, THE TRIER OF FACT SHALL CON-  
24 sider THE PLAINTIFF S NEGLIGENCE AT THE TIME OF THE OCCURRENCE  
25 THAT RESULTED IN THE INJURY AND SHALL REDUCE THE PLAINTIFF'S VER-  
26 DICT AMOUNT IN PROPORTION TO THE AMOUNT THAT THE PLAINTIFF'S  
27 NEGLIGENCE WAS A PROXIMATE CAUSE OF THE INJURY UNDER THIS



1 SECTION A PLAINTIFF S NEGLIGENCE INCLUDES BUT IS NOT LIMITED  
 2 TO A FINDING THAT 1 OR BOTH OF THE FOLLOWING WERE TRUE AT THE  
 3 TIME OF THE OCCURRENCE THAT RESULTED IN THE INJURY

4 (A) THE PLAINTIFF WAS NOT WEARING A SAFETY BELT

5 (B) THE PLAINTIFF OR, IF THE PLAINTIFF WAS A PASSENGER IN A  
 6 VEHICLE, THE DRIVER OF THE VEHICLE IS UNDER THE INFLUENCE OF  
 7 INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE OR A COMBINATION  
 8 OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE OR HAS A BLOOD  
 9 ALCOHOL CONTENT OF 0.07% OR MORE BY WEIGHT OF ALCOHOL

10 Sec 4 (1) ~~As a condition to any recovery~~ EXCEPT AS PRO-  
 11 VIDED IN SUBSECTION (3), AN INJURED PERSON SHALL NOT RECOVER for  
 12 injuries sustained by reason of ~~any~~ A defective highway ~~, the~~  
 13 ~~injured person~~ UNLESS within ~~+20~~ 180 days ~~from~~ AFTER the  
 14 time the injury ~~occurred, except as otherwise provided in sub~~  
 15 ~~section (3) shall serve~~ OCCURS, THE INJURED PERSON SERVES a  
 16 notice on the governmental agency of the occurrence of the injury  
 17 and the defect The notice shall specify the exact location and  
 18 nature of the defect, the injury sustained and the names of the  
 19 witnesses known at the time by the claimant

20 (2) ~~The~~ OTHER THAN NOTICE TO THE STATE, THE notice may be  
 21 served ~~upon any individual,~~ either personally ~~,~~ or by certi-  
 22 fied mail, return receipt requested, UPON ANY INDIVIDUAL who may  
 23 lawfully be served with civil process directed against the gov-  
 24 ernmental agency, anything to the contrary in the charter of  
 25 ~~any~~ A municipal corporation notwithstanding ~~In case of the~~  
 26 ~~state, such notice~~ NOTICE TO THE STATE UNDER THIS SECTION shall  
 27 be filed in triplicate with the clerk of the court of claims

1 Filing of ~~such~~ THE notice ~~shall constitute~~ CONSTITUTES  
2 compliance with section 6431 of THE REVISED JUDICATURE ACT OF  
3 1961 Act No 236 of the Public Acts of 1961, being section  
4 600 6431 of the MICHIGAN Compiled Laws, ~~of 1948,~~ requiring the  
5 filing of notice of intention to file a claim against the state  
6 If required by the legislative body or chief administrative offi-  
7 cer of the responsible governmental agency the claimant shall  
8 appear to testify, if he OR SHE is physically able to do so ~~and~~  
9 ~~and~~ THE CLAIMANT shall produce ~~his~~ witnesses before the legis-  
10 lative body, a committee ~~thereof~~ OF THAT BODY, ~~or~~ the chief  
11 administrative officer ~~or~~ ~~his~~ THAT OFFICER'S deputy, or a  
12 legal officer of the governmental agency as directed by the leg-  
13 islative body or chief administrative officer of the responsible  
14 governmental agency, for examination under oath as to the claim  
15 the amount ~~thereof~~ OF THE CLAIM, and the extent of the injury  
16 (3) ~~If the injured person is under the age of 18 years at~~  
17 ~~the time the injury occurred, he shall serve the notice required~~  
18 ~~by subsection (1) not more than 180 days from the time the injury~~  
19 ~~occurred which notice may be filed by a parent attorney, next~~  
20 ~~friend or legally appointed guardian~~ If the injured person is  
21 physically or mentally incapable of giving notice ~~he~~ THE  
22 PERSON shall serve the notice required by subsection (1) not more  
23 than 180 days after the termination of the disability In ~~all~~  
24 A civil ~~actions~~ ACTION in which the physical or mental capabil-  
25 ity of the person is in dispute, that issue shall be determined  
26 by the trier of the facts ~~The provisions of this~~ THIS  
27 subsection ~~shall apply~~ APPLIES to all charter provisions,

1 statutes, and ordinances ~~which~~ THAT require written ~~notices~~  
2 NOTICE to ~~counties~~ A COUNTY or municipal ~~corporations~~  
3 CORPORATION

4 (4) A NOTIFICATION TIME LIMIT PRESCRIBED BY THIS SECTION IS  
5 AN ABSOLUTE BAR TO RECOVERY REGARDLESS OF WHETHER THE GOVERNMEN-  
6 TAL AGENCY IS PREJUDICED BY THE FAILURE OF TIMELY NOTIFICATION

7 Section 2 This amendatory act shall not take effect unless  
8 Senate Bill No \_\_\_\_\_ or House Bill No 5634 (request  
9 no 05140'93 b \*\*) of the 87th Legislature is enacted into law