

The Committee on Judiciary offered the following substitute:

March 19, 1997

**SUBSTITUTE FOR
SENATE BILL NO. 306**

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 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,"

by amending the title and sections 1, 2, 4, and 6 (MCL 691.1401, 691.1402, 691.1404, and 691.1406), the title and section 1 as amended by 1986 PA 175 and section 2 as amended by 1996 PA 150, and by adding sections 2a and 2b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to ~~make uniform~~ DEFINE AND LIMIT the liability of
3 municipal corporations, political subdivisions, and the state,
4 ~~its~~ THEIR agencies and departments, THEIR officers, employees,
5 and volunteers, ~~thereof~~, and members of certain boards, coun-
6 cils, and task forces when engaged in the exercise or discharge
7 of a governmental function, for injuries to property and persons;
8 ~~to define and limit this liability;~~ to define and limit the
9 liability of the state when engaged in a proprietary function; to
10 authorize the purchase of liability insurance to protect against
11 loss arising out of this liability; to provide for defending cer-
12 tain claims made against public officers and paying damages
13 sought or awarded against them; to provide for the legal defense
14 of public officers and employees; to provide for reimbursement of
15 public officers and employees for certain legal expenses; and to
16 repeal ~~certain~~ acts and parts of acts.

17 Sec. 1. As used in this act:

18 (A) "CONSUMER PRICE INDEX" MEANS THE MOST COMPREHENSIVE
19 INDEX OF CONSUMER PRICES AVAILABLE FOR THIS STATE FROM THE BUREAU
20 OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR.

21 (B) "GOVERNMENTAL AGENCY" MEANS THE STATE, A POLITICAL SUB-
22 DIVISION, OR A MUNICIPAL CORPORATION.

23 (C) "GOVERNMENTAL FUNCTION" IS AN ACTIVITY THAT IS EXPRESSLY
24 OR IMPLIEDLY MANDATED OR AUTHORIZED BY CONSTITUTION, STATUTE,
25 LOCAL CHARTER OR ORDINANCE, OR OTHER LAW.

26 (D) "HIGHWAY" MEANS A PUBLIC HIGHWAY, ROAD, OR STREET THAT
27 IS OPEN FOR PUBLIC TRAVEL. HIGHWAY INCLUDES BRIDGES, SIDEWALKS,

1 CROSSWALKS, AND CULVERTS ON THE HIGHWAY. HIGHWAY DOES NOT
2 INCLUDE ALLEYS, PARKING LOTS, ROADSIDE REST AREAS, TREES, OR
3 UTILITY POLES.

4 (E) "IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR VEHICULAR
5 TRAVEL" MEANS THE PHYSICAL STRUCTURE OF THE TRAVELED PORTION,
6 PAVED OR UNPAVED, OF THE ROADBED ACTUALLY DESIGNED FOR PUBLIC
7 VEHICULAR TRAVEL. IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR
8 VEHICULAR TRAVEL INCLUDES A GUARDRAIL, A TRAFFIC CONTROL SIGNAL,
9 OR A WARNING OR REGULATORY SIGN OR SIGNAL THAT REQUIRES THE
10 DRIVER TO CHANGE SPEED OR DIRECTION, BUT ONLY TO THE EXTENT THAT
11 THE CONTROL SIGNAL, OR THE WARNING OR REGULATORY SIGN OR SIGNAL,
12 IS ESSENTIAL TO REASONABLY SAFE TRAVEL AND NOT TO THE EXTENT THAT
13 IT PROVIDES A NEEDLESSLY REPETITIVE IDENTICAL TRAFFIC CUE. BY
14 WAY OF ILLUSTRATION AND NOT LIMITATION, IMPROVED PORTION OF THE
15 HIGHWAY DESIGNED FOR VEHICULAR TRAVEL DOES NOT INCLUDE A SHOUL-
16 DER, CURB, TREE OR OTHER VEGETATION, UTILITY POLE, MEDIAN, SIDE-
17 WALK, CROSSWALK, CULVERT, OR BARRIER; LIGHTING; OR ANOTHER
18 INSTALLATION OR CONDITION LOCATED BEYOND THE TRAVELED PORTION OF
19 THE ROADBED. THE INCLUSIVE AND EXCLUSIVE PROVISIONS IN THIS DEF-
20 INITION SHALL NOT BE CONSIDERED TO AMEND OR EXPAND THE INCLUSIVE
21 OR EXCLUSIVE PROVISIONS IN THE DEFINITION OF THE TERM "HIGHWAY"
22 IN SUBDIVISION (D).

23 (F) "JURISDICTION" MEANS INCLUSION OF A HIGHWAY IN A GOVERN-
24 MENTAL AGENCY SYSTEM UNDER SECTIONS 1 TO 9 OF 1951 PA 51, MCL
25 247.651 TO 247.659.

1 (G) ~~(a)~~ "Municipal corporation" means ~~any~~ A city,
2 village, township, or charter township, or ~~any~~ A combination
3 ~~thereof~~ OF ANY OF THESE, when acting jointly.

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

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

19 ~~(d) "Governmental agency" means the state, political subdi-~~
20 ~~visions, and municipal corporations.~~

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

25 ~~(f) "Governmental function" is an activity which is~~
26 ~~expressly or impliedly mandated or authorized by constitution,~~
27 ~~statute, local charter or ordinance, or other law.~~

1 (J) ~~(g)~~ "Volunteer" means an individual who is
2 specifically designated as ~~such~~ A VOLUNTEER and who is acting
3 solely on behalf of a governmental agency.

4 (K) "VERDICT" MEANS THE TOTAL OF ALL OF THE FOLLOWING:

5 (i) DAMAGES.

6 (ii) INTEREST.

7 (iii) FEES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY AND
8 EXPERT FEES.

9 (iv) COSTS.

10 Sec. 2. (1) ~~Each~~ SUBJECT TO THE OTHER PROVISIONS OF THIS
11 SECTION, EACH governmental agency having jurisdiction over a
12 highway shall maintain the highway in reasonable repair so that
13 it is reasonably safe and ~~convenient for public~~ FIT FOR
14 travel. A person sustaining bodily injury or damage to his or
15 her property by reason of failure of a governmental agency to
16 keep a highway under its jurisdiction in reasonable repair, and
17 in condition reasonably safe and fit for travel, may recover the
18 damages suffered by him or her from the governmental agency. A
19 PERSON SHALL NOT MAINTAIN A SEPARATE ACTION UNDER THIS SECTION
20 AGAINST AN EMPLOYEE, AGENT, OR VOLUNTEER OF A GOVERNMENTAL
21 AGENCY.

22 (2) The liability, procedure, and remedy as to county roads
23 under the jurisdiction of a county road commission ~~shall be~~ IS
24 as provided in section 21 of chapter IV of ~~Act No. 283 of the~~
25 ~~Public Acts of 1909, as amended, being section 224.21 of the~~
26 ~~Michigan Compiled Laws~~ 1909 PA 283, MCL 224.21.

1 (3) The duty of the state and the county road commissions to
2 repair and maintain highways, and the liability for that duty,
3 extends only to the improved portion of the highway designed for
4 vehicular travel and ~~does not include sidewalks, crosswalks, or~~
5 ~~any other installation outside of~~ REQUIRES THAT the improved
6 portion of the highway designed for vehicular travel BE REASON-
7 ABLY SAFE AND FIT FOR TRAVEL.

8 (4) A HIGHWAY OR THE IMPROVED PORTION OF THE HIGHWAY
9 DESIGNED FOR VEHICULAR TRAVEL IS NOT DEFECTIVE AND SHALL BE CON-
10 sidered reasonably safe and fit for travel if the condition that
11 is alleged to have caused the injury or damage that is the basis
12 of an action under this section is a depression or elevation that
13 has a vertical difference from the immediately adjacent traveling
14 surface of 2 inches or less.

15 (5) A judgment against the state based on a claim arising
16 under this section from acts or omissions of the state transpor-
17 tation department is payable only from restricted funds appropri-
18 ated to the state transportation department or ~~funds~~ MONEY pro-
19 vided by its insurer.

20 (6) ~~(2)~~ If the state transportation department contracts
21 with another governmental agency to perform work on a state
22 trunkline highway, an action brought under this section for tort
23 liability arising out of the performance of that work shall be
24 brought only against the state transportation department under
25 the same circumstances and to the same extent as if the work had
26 been performed by employees of the state transportation
27 department. The state transportation department has the same

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

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

18 (8) ONLY THE GOVERNMENTAL AGENCY THAT HAS JURISDICTION OVER
19 THE HIGHWAY AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE
20 INJURY OR DAMAGE IS LIABLE IN AN ACTION UNDER THIS SECTION.

21 (9) ~~(4)~~ The duty imposed by this section on a governmental
22 agency is limited by the provisions of section 81131 of part 811
23 (off-road recreation vehicles) and section 82124 of part 821
24 (snowmobiles) of the natural resources and environmental protec-
25 tion act, ~~Act No. 451 of the Public Acts of 1994, being sections~~
26 ~~324.81131 and 324.82124 of the Michigan Compiled Laws~~ 1994 PA
27 451, MCL 324.81131 AND 324.82124.

(10) THERE IS NO LIABILITY UNDER THIS SECTION FOR THE FAILURE
TO INSTALL A GUARDRAIL IF THE FAILURE TO INSTALL A GUARDRAIL WAS IN
CONFORMANCE WITH GENERALLY ACCEPTED ENGINEERING STANDARDS.

(11) THERE IS NO LIABILITY UNDER THIS SECTION IF THE GUARDRAIL
THAT IS THE BASIS FOR THE ACTION HAS BEEN INSTALLED AND MAINTAINED,
ALTERED, UPGRADED, OR IMPROVED IN CONFORMANCE WITH GENERALLY
ACCEPTED ENGINEERING STANDARDS.

(12) SUBJECT TO THE LIMITATIONS OF SUBSECTIONS (10) AND (11), ANY ACTION UNDER THIS SECTION ALLEGING DAMAGES BASED ON A GUARDRAIL SHALL ONLY BE BROUGHT IF THE DEFENDANT'S ACT OR OMISSION WAS GROSS NEGLIGENCE. AS USED IN THIS SUBSECTION, "GROSS NEGLIGENCE" MEANS CONDUCT SO RECKLESS AS TO DEMONSTRATE A SUBSTANTIAL LACK OF CONCERN FOR WHETHER AN INJURY RESULTS.

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1 SEC. 2A. (1) IN AN ACTION UNDER SECTION 2, IF THE
2 INDIVIDUAL UPON WHOSE DEATH OR INJURY, OR WHO SUSTAINED THE PROP-
3 ERTY DAMAGE UPON WHICH, THE ACTION IS BASED WAS REQUIRED, AT THE
4 TIME OF THE OCCURRENCE THAT RESULTED IN THE DEATH, INJURY, OR
5 PROPERTY DAMAGE, TO PROCURE INSURANCE AS REQUIRED UNDER CHAPTER
6 31 OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.3101 TO
7 500.3179, AND FAILED TO DO SO, THE VERDICT RECOVERABLE FROM ALL
8 GOVERNMENTAL AGENCIES SHALL NOT INCLUDE DAMAGES FOR NONECONOMIC
9 LOSS. IN ALL OTHER CASES, IN AN ACTION UNDER SECTION 2 AND
10 SUBJECT TO SUBSECTION (7) AND SECTION 2B, THE VERDICT RECOVERABLE
11 FROM ALL GOVERNMENTAL AGENCIES FOR NONECONOMIC LOSS SHALL NOT
12 EXCEED THE LOWER OF THE FOLLOWING THAT IS APPROPRIATE UNDER THE
13 FACTS OF THAT ACTION:

14 (A) IF THE ACTION IS BASED ON AN INDIVIDUAL'S DEATH OR LOSS
15 OF A VITAL BODILY FUNCTION, NOT MORE THAN \$500,000.00 FOR ALL
16 CLAIMS BY THE INDIVIDUAL OR THE INDIVIDUAL'S ESTATE FOR BODILY
17 INJURY OR FOR DAMAGE TO THE INDIVIDUAL'S PROPERTY AND ALL OTHER
18 CLAIMS BY OTHER PERSONS ARISING OUT OF THE SAME DEATH, INJURY, OR
19 DAMAGE.

20 (B) FOR AN ACTION OTHER THAN AN ACTION DESCRIBED IN
21 SUBDIVISION (A), NOT MORE THAN \$280,000.00 FOR ALL CLAIMS BY AN
22 INDIVIDUAL FOR BODILY INJURY OR FOR DAMAGE TO THE INDIVIDUAL'S
23 PROPERTY AND ALL OTHER CLAIMS BY OTHER PERSONS ARISING OUT OF THE
24 SAME INJURY OR DAMAGE.

25 (2) IN AN ACTION UNDER SECTION 2, A LIMITATION ON THE VER-
26 DICT RECOVERABLE PRESCRIBED BY THIS SECTION DOES NOT APPLY
27 SEPARATELY TO EACH PERSON CLAIMING NONECONOMIC DAMAGES. THE

1 LIMITATION APPLIES TO THE AGGREGATED AMOUNT OF ALL OF THE
2 FOLLOWING:

3 (A) NONECONOMIC DAMAGE CLAIMS BY AN INDIVIDUAL OR THE
4 INDIVIDUAL'S ESTATE FOR THE INDIVIDUAL'S BODILY INJURY OR DEATH
5 OR FOR DAMAGE TO THE INDIVIDUAL'S PROPERTY.

6 (B) NONECONOMIC DAMAGE CLAIMS BY OTHER PERSONS ARISING OUT
7 OF THE SAME DEATH, INJURY, OR DAMAGE.

8 (3) IF THE INJURED INDIVIDUAL WAS REQUIRED TO PROCURE INSUR-
9 ANCE UNDER CHAPTER 31 OF THE INSURANCE CODE OF 1956, 1956 PA 218,
10 MCL 500.3101 TO 500.3179, AND FAILED TO DO SO, IN AN ACTION UNDER
11 SECTION 2 AND SUBJECT TO SUBSECTION (7) AND SECTION 2B, THE VER-
12 DICT RECOVERABLE FROM ALL GOVERNMENTAL AGENCIES FOR ECONOMIC LOSS
13 SHALL NOT EXCEED \$300,000.00.

14 (4) IN AN ACTION UNDER SECTION 2 AND SUBJECT TO SUBSECTION
15 (7) AND SECTION 2B, THE LIABILITY OF ALL GOVERNMENTAL AGENCIES
16 FOR DAMAGES FOR MEDICAL SERVICES, INCLUDING, BUT NOT LIMITED TO,
17 TREATMENT, REHABILITATION SERVICES, AND CUSTODIAL CARE, IS
18 LIMITED TO THOSE DAMAGES FOR MEDICAL SERVICES THAT ARE OBJEC-
19 TIVELY VERIFIABLE.

20 (5) IN AWARDING DAMAGES IN AN ACTION UNDER SECTION 2, THE
21 TRIER OF FACT SHALL ITEMIZE DAMAGES INTO ECONOMIC AND NONECONOMIC
22 LOSSES. THE COURT OR COUNSEL FOR A PARTY IN AN ACTION UNDER SEC-
23 TION 2 SHALL NOT ADVISE THE JURY OF THE LIMITATIONS ON THE VER-
24 DICT RECOVERABLE PRESCRIBED BY THIS SECTION. SUBJECT TO
25 SECTION 2B, IF A LIMITATION PRESCRIBED BY THIS SECTION APPLIES,
26 THE COURT SHALL SET ASIDE THE AMOUNT OF THE VERDICT THAT IS IN
27 EXCESS OF THE LIMITATION.

1 (6) A GOVERNMENTAL AGENCY IS ENTITLED TO A REDUCTION IN
2 DAMAGES BASED ON A PAYMENT FROM A COLLATERAL SOURCE AS PROVIDED
3 IN SECTION 6303 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA
4 236, MCL 600.6303, INCLUDING BENEFITS PAID OR PAYABLE UNDER SEC-
5 TION 3116 OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL
6 500.3116. FOR PURPOSES OF THIS SUBSECTION, A LIEN BY AN INDIVID-
7 UAL, PARTNERSHIP, ASSOCIATION, CORPORATION, OR OTHER LEGAL ENTITY
8 IS NOT ENFORCEABLE AGAINST A PLAINTIFF'S DAMAGES RECOVERED FROM A
9 GOVERNMENTAL AGENCY IN AN ACTION BROUGHT UNDER SECTION 2.

10 (7) ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
11 THIS SECTION, THE STATE TREASURER SHALL ADJUST THE LIMITATIONS ON
12 THE VERDICT RECOVERABLE PRESCRIBED BY SUBSECTION (1) SO THAT THE
13 LIMITATIONS ARE EQUAL TO THE CORRESPONDING LIMITATION AMOUNTS
14 PROVIDED IN SECTION 1483 OF THE REVISED JUDICATURE ACT OF 1961,
15 1961 PA 236, MCL 600.1483, AS THOSE LIMITATION AMOUNTS HAVE BEEN
16 ADJUSTED TO THAT DATE. AFTER THE INITIAL ADJUSTMENT MADE UNDER
17 THIS SUBSECTION, THE STATE TREASURER SHALL ADJUST THE LIMITATIONS
18 PRESCRIBED BY SUBSECTION (1) AT THE END OF EACH CALENDAR YEAR SO
19 THAT THEY CONTINUE TO BE EQUAL TO THE CORRESPONDING LIMITATION
20 AMOUNTS PROVIDED IN SECTION 1483 OF THE REVISED JUDICATURE ACT OF
21 1961, 1961 PA 236, MCL 600.1483.

22 SEC. 2B. (1) BEFORE THE COURT APPLIES A LIMITATION ON THE
23 VERDICT RECOVERABLE TO A VERDICT AS PRESCRIBED BY SECTION 2A AND
24 SUBJECT TO SUBSECTION (2), THE TRIER OF FACT SHALL CONSIDER THE
25 NEGLIGENCE OF THE INDIVIDUAL UPON WHOSE DEATH OR INJURY, OR WHO
26 SUSTAINED THE PROPERTY DAMAGE UPON WHICH, THE ACTION IS BASED AT
27 THE TIME OF THE OCCURRENCE THAT RESULTED IN THE DEATH, INJURY, OR

1 PROPERTY DAMAGE AND SHALL REDUCE THE PLAINTIFF'S VERDICT IN
2 PROPORTION TO THE AMOUNT THAT THAT INDIVIDUAL'S NEGLIGENCE WAS A
3 PROXIMATE CAUSE OF THE DEATH, INJURY, OR PROPERTY DAMAGE.

4 (2) IT IS AN ABSOLUTE DEFENSE IN AN ACTION UNDER SECTION 2
5 FOR THE DEATH OF AN INDIVIDUAL OR FOR INJURY TO A PERSON OR
6 DAMAGE TO PROPERTY THAT THE INDIVIDUAL UPON WHOSE DEATH, INJURY,
7 OR PROPERTY DAMAGE THE ACTION IS BASED HAD AN IMPAIRED ABILITY TO
8 FUNCTION DUE TO THE INFLUENCE OF INTOXICATING LIQUOR OR A CON-
9 TROLLED SUBSTANCE, AND AS A RESULT OF THAT IMPAIRED ABILITY, THE
10 INDIVIDUAL WAS 50% OR MORE THE CAUSE OF THE ACCIDENT OR EVENT
11 THAT RESULTED IN THE DEATH, INJURY, OR PROPERTY DAMAGE. IF THE
12 INDIVIDUAL DESCRIBED IN THIS SUBSECTION WAS LESS THAN 50% THE
13 CAUSE OF THE ACCIDENT OR EVENT, AN AWARD OF DAMAGES SHALL BE
14 REDUCED BY THAT PERCENTAGE. AN INDIVIDUAL IS PRESUMED UNDER THIS
15 SUBSECTION TO HAVE AN IMPAIRED ABILITY TO FUNCTION DUE TO THE
16 INFLUENCE OF INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE IF,
17 UNDER A STANDARD PRESCRIBED BY SECTION 625A OF THE MICHIGAN VEHI-
18 CLE CODE, 1949 PA 300, MCL 257.625A, A PRESUMPTION WOULD ARISE
19 THAT THE INDIVIDUAL'S ABILITY TO OPERATE A VEHICLE WAS IMPAIRED.

20 (3) AS USED IN THIS SECTION:

21 (A) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN
22 SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
23 333.7104.

24 (B) "IMPAIRED ABILITY TO FUNCTION DUE TO THE INFLUENCE OF
25 INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE" MEANS THAT, AS A
26 RESULT OF AN INDIVIDUAL DRINKING, INGESTING, SMOKING, INJECTING,
27 OR OTHERWISE CONSUMING INTOXICATING LIQUOR OR A CONTROLLED

1 SUBSTANCE, THE INDIVIDUAL'S SENSES ARE IMPAIRED TO THE POINT THAT
2 THE INDIVIDUAL'S ABILITY TO REACT IS DIMINISHED FROM WHAT IT
3 WOULD BE HAD THE INDIVIDUAL NOT CONSUMED LIQUOR OR A CONTROLLED
4 SUBSTANCE.

5 Sec. 4. (1) ~~As a condition to any recovery~~ EXCEPT AS PRO-
6 VIDED IN SUBSECTION (3), AN INJURED PERSON SHALL NOT RECOVER for
7 DEATH, BODILY injuries, OR DAMAGE TO PROPERTY sustained by reason
8 of ~~any~~ A defective highway ~~, the injured person~~ UNLESS,
9 within 120 days ~~from~~ AFTER the time the DEATH, injury,
10 ~~occurred, except as otherwise provided in subsection (3) shall~~
11 ~~serve~~ OR PROPERTY DAMAGE OCCURS, THE INJURED PERSON SERVES a
12 notice on the governmental agency of the occurrence of the DEATH,
13 injury, OR PROPERTY DAMAGE and the defect. The notice shall
14 specify the exact location and nature of the defect, the DEATH,
15 injury, OR PROPERTY DAMAGE sustained, and the names of the wit-
16 nesses known at the time by the claimant.

17 (2) ~~The~~ OTHER THAN NOTICE TO THE STATE, THE NOTICE
18 REQUIRED UNDER SUBSECTION (1) may be served ~~upon any~~
19 ~~individual,~~ either personally ~~,~~ or by certified mail, return
20 receipt requested, UPON ANY INDIVIDUAL who may lawfully be served
21 with civil process directed against the governmental agency, any-
22 thing to the contrary in the charter of ~~any~~ A municipal corpo-
23 ration notwithstanding. ~~In case of the state, such notice~~
24 NOTICE TO THE STATE REQUIRED UNDER SUBSECTION (1) shall be filed
25 in triplicate with the clerk of the court of claims. Filing of
26 ~~such~~ THE notice ~~shall constitute~~ CONSTITUTES compliance with
27 section 6431 of ~~Act No. 236 of the Public Acts of 1961, being~~

1 ~~section 600.6431 of the Compiled Laws of 1948~~ THE REVISED
2 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.6431, requiring the
3 filing of notice of intention to file a claim against the state.
4 If required by the legislative body or chief administrative offi-
5 cer of the responsible governmental agency, the claimant shall
6 appear to testify, if he OR SHE is physically able to do so. ~~—~~
7 ~~and~~ THE CLAIMANT shall produce ~~his~~ witnesses before the legis-
8 lative body ~~—~~, OR a committee ~~thereof~~ OF THAT BODY, ~~or~~ the
9 chief administrative officer ~~—~~, or ~~his~~ THAT OFFICER'S deputy,
10 or a legal officer of the governmental agency as directed by the
11 legislative body or chief administrative officer of the responsi-
12 ble governmental agency, for examination under oath as to the
13 claim, the amount ~~thereof~~ OF THE CLAIM, and the extent of the
14 injury OR DAMAGE.

15 (3) ~~If the injured person is under the age of 18 years at~~
16 ~~the time the injury occurred, he shall serve the notice required~~
17 ~~by subsection (1) not more than 180 days from the time the injury~~
18 ~~occurred, which notice may be filed by a parent, attorney, next~~
19 ~~friend or legally appointed guardian.~~ If the injured person OR
20 PERSON WHOSE PROPERTY WAS DAMAGED is physically or mentally
21 incapable of giving THE notice REQUIRED UNDER SUBSECTION (1),
22 ~~he~~ THE PERSON shall serve the notice ~~required by subsection~~
23 ~~(1)~~ not more than 180 days after the termination of the
24 disability. In ~~all~~ A civil ~~actions~~ ACTION in which the phys-
25 ical or mental capability of the person is in dispute, that issue
26 shall be determined by the trier of ~~the facts~~ FACT. ~~The~~
27 ~~provisions of this~~ THIS subsection ~~shall apply~~ APPLIES to all

1 charter provisions, statutes, and ordinances ~~which~~ THAT require
2 written ~~notices~~ NOTICE to ~~counties~~ A COUNTY OR OTHER POLITI-
3 CAL SUBDIVISION or TO A municipal ~~corporations~~ CORPORATION.

4 (4) FAILURE TO PROVIDE NOTICE WITHIN A TIME LIMIT PRESCRIBED
5 BY THIS SECTION IS AN ABSOLUTE BAR TO RECOVERY.

6 Sec. 6. (1) ~~Governmental agencies have the obligation to~~
7 A GOVERNMENTAL AGENCY SHALL repair and maintain EACH public
8 ~~buildings~~ BUILDING under ~~their~~ THE control ~~when~~ OF THE GOV-
9 ERNMENTAL AGENCY IF THE PUBLIC BUILDING IS open for use by mem-
10 bers of the public. ~~Governmental agencies are~~ A GOVERNMENTAL
11 AGENCY IS liable for DEATH, bodily injury, ~~and~~ OR property
12 damage resulting from a dangerous or defective condition of a
13 public building if the governmental agency had actual or con-
14 structive knowledge of the defect and, for a reasonable time
15 after acquiring THE knowledge, failed to remedy the DANGEROUS OR
16 DEFECTIVE condition or to take action reasonably necessary to
17 protect the public against the DANGEROUS OR DEFECTIVE condition.
18 Knowledge of the dangerous ~~and~~ OR defective condition of the
19 public building and time to repair the ~~same shall be~~ DANGEROUS
20 OR DEFECTIVE CONDITION ARE conclusively presumed ~~when such~~
21 ~~defect~~ IF THE DANGEROUS OR DEFECTIVE CONDITION existed so as to
22 be readily apparent to an ordinary observant person for a period
23 of 90 days or longer before the injury OR DAMAGE took place.

24 (2) As a condition to ~~any~~ recovery for ~~injuries~~ DEATH,
25 INJURY, OR PROPERTY DAMAGE sustained by reason of ~~any~~ A danger-
26 ous or defective CONDITION OF A public building, the ~~injured~~
27 person WHO SUSTAINED THE INJURY OR DAMAGE, within 120 days ~~from~~

1 AFTER the time the injury OR DAMAGE occurred, shall serve a
2 notice on the responsible governmental agency. ~~of the occurrence~~
3 ~~of the injury and the defect.~~ The notice shall specify the exact
4 location ~~and~~ OF THE PUBLIC BUILDING, THE nature of the ~~defect~~
5 DANGEROUS OR DEFECTIVE CONDITION, the injury OR DAMAGE sustained,
6 and the names of the witnesses known at the time by the
7 claimant.

8 (3) The notice REQUIRED UNDER SUBSECTION (2) may be served
9 upon any individual, either personally, or by certified mail,
10 return receipt requested, who may lawfully be served with civil
11 process directed against the responsible governmental agency,
12 anything to the contrary in the charter of ~~any~~ A POLITICAL SUB-
13 DIVISION OR OTHER municipal corporation notwithstanding. If
14 required by the legislative body or chief administrative officer
15 of the responsible governmental agency, the claimant shall appear
16 to testify, ~~when~~ IF physically able to do so, and shall produce
17 ~~his~~ witnesses before the legislative body ~~,~~ OR a committee
18 ~~thereof~~ OF THAT BODY, the chief administrative officer ~~,~~ ~~his~~
19 OR THAT OFFICER'S deputy, or a legal officer of the governmental
20 agency, as directed by the legislative body or by the chief
21 administrative officer of the responsible governmental agency,
22 for examination under oath as to the claim, the amount ~~thereof~~
23 OF THE CLAIM, and the extent of the injury OR DAMAGE. Notice to
24 the state of Michigan shall be given as provided in section 4.
25 ~~No~~

26 (4) A PERSON SHALL NOT BRING AN action ~~shall be brought~~
27 under ~~the provisions of~~ this section against ~~any~~ A

1 governmental agency ~~—~~ other than a municipal corporation ~~—~~,
2 except for injury or loss suffered after July 1, 1965.

3 (5) IF THE PERSON WHO SUSTAINED THE INJURY OR DAMAGE IS
4 PHYSICALLY OR MENTALLY INCAPABLE OF GIVING THE NOTICE REQUIRED
5 UNDER SUBSECTION (2), THE PERSON SHALL SERVE THE NOTICE NOT MORE
6 THAN 180 DAYS AFTER THE TERMINATION OF THE DISABILITY. IN A
7 CIVIL ACTION IN WHICH THE PHYSICAL OR MENTAL CAPABILITY OF THE
8 PERSON IS IN DISPUTE, THE ISSUE SHALL BE DETERMINED BY THE TRIER
9 OF FACT. THIS SUBSECTION APPLIES TO ALL CHARTER PROVISIONS,
10 STATUTES, AND ORDINANCES THAT REQUIRE WRITTEN NOTICE TO A COUNTY
11 OR OTHER POLITICAL SUBDIVISION OR TO A MUNICIPAL CORPORATION.

12 (6) FAILURE TO PROVIDE NOTICE WITHIN A TIME LIMIT PRESCRIBED
13 BY THIS SECTION IS AN ABSOLUTE BAR TO RECOVERY.