

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 4010

(As passed the House, June 10, 1999)

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 sections 1 and 2 (MCL 691.1401 and 691.1402), section 1 as amended by 1986 PA 175 and section 2 as amended by 1996 PA 150, and by adding section 2a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

HB 4010, As Passed Senate, December 1, 1999

House Bill No. 4010

2

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

4 (b) "Political subdivision" means ~~any~~ A municipal corpora-
5 tion, 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 2 OR MORE OF THESE when
9 acting jointly; ~~,~~ and ~~any~~ A district or authority authorized by
10 law or formed by 1 or more political subdivisions; ~~,~~ and ~~any~~ OR
11 AN agency, department, court, board, or council of a political
12 subdivision.

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

18 (d) "Governmental agency" means the state ~~,~~ OR A political
19 ~~subdivisions, and municipal corporations~~ SUBDIVISION.

20 (e) "Highway" means ~~every~~ A public highway, road, ~~and~~ OR
21 street ~~which~~ THAT is open for public travel and ~~shall include~~
22 INCLUDES bridges, sidewalks, TRAILWAYS, crosswalks, and culverts
23 on ~~any~~ THE highway. The term highway does not include alleys,
24 trees, and utility poles.

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

HB 4010, As Passed Senate, December 1, 1999

House Bill No. 4010

3

1 (G) "TOWNSHIP" INCLUDES CHARTER TOWNSHIP.

2 (H) ~~(g)~~ "Volunteer" means an individual who is specifi-
3 cally designated as ~~such~~ A VOLUNTEER and who is acting solely
4 on behalf of a governmental agency.

5 Sec. 2. (1) ~~Each~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION
6 2A, EACH governmental agency having jurisdiction over a highway
7 shall maintain the highway in reasonable repair so that it is
8 reasonably safe and convenient for public travel. A person
9 ~~sustaining~~ WHO SUSTAINS bodily injury or damage to his or her
10 property by reason of failure of a governmental agency to keep a
11 highway under its jurisdiction in reasonable repair ~~—~~, and in A
12 condition reasonably safe and fit for travel ~~—~~, may recover the
13 damages suffered by him or her from the governmental agency. The
14 liability, procedure, and remedy as to county roads under the
15 jurisdiction of a county road commission shall be as provided in
16 section 21 of chapter IV of ~~Act No. 283 of the Public Acts of~~
17 ~~1909, as amended, being section 224.21 of the Michigan Compiled~~
18 ~~Laws~~ 1909 PA 283, MCL 224.21. The duty of the state and the
19 county road commissions to repair and maintain highways, and the
20 liability for that duty, extends only to the improved portion of
21 the highway designed for vehicular travel and does not include
22 sidewalks, TRAILWAYS, crosswalks, or any other installation out-
23 side of the improved portion of the highway designed for vehicu-
24 lar travel. A judgment against the state based on a claim aris-
25 ing under this section from acts or omissions of the state trans-
26 portation department is payable only from restricted funds

HB 4010, As Passed Senate, December 1, 1999

House Bill No. 4010

4

1 appropriated to the state transportation department or funds
2 provided by its insurer.

3 (2) If the state transportation department contracts with
4 another governmental agency to perform work on a state
5 ~~trunkline~~ TRUNK LINE highway, an action brought under this sec-
6 tion for tort liability arising out of the performance of that
7 work shall be brought only against the state transportation
8 department under the same circumstances and to the same extent as
9 if the work had been performed by employees of the state trans-
10 portation department. The state transportation department has
11 the same defenses to the action as it would have had if the work
12 had been performed by its own employees. If an action described
13 in this subsection could have been maintained against the state
14 transportation department, it shall not be maintained against the
15 governmental agency that performed the work for the state trans-
16 portation department. The governmental agency also has the same
17 defenses that could have been asserted by the state transporta-
18 tion department had the action been brought against the state
19 transportation department.

20 (3) The contractual undertaking of a governmental agency to
21 maintain a state ~~trunkline~~ TRUNK LINE highway confers contrac-
22 tual rights only on the state transportation department and does
23 not confer third party beneficiary or other contractual rights in
24 any other person to recover damages to person or property from
25 that governmental agency. This subsection does not relieve the
26 state transportation department of liability it may have, under
27 this section, regarding that highway.

HB 4010, As Passed Senate, December 1, 1999

House Bill No. 4010

5

1 (4) The duty imposed by this section on a governmental
2 agency is limited by ~~the provisions of section~~ SECTIONS 81131
3 ~~of part 811 (off-road recreation vehicles) and section~~ AND
4 82124 ~~of part 821 (snowmobiles)~~ of the natural resources and
5 environmental protection act, ~~Act No. 451 of the Public Acts of~~
6 ~~1994, being sections 324.81131 and 324.82124 of the Michigan~~
7 ~~Compiled Laws~~ 1994 PA 451, MCL 324.81131 AND 324.82124.

8 SEC. 2A. (1) EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION,
9 A MUNICIPAL CORPORATION HAS NO DUTY TO REPAIR OR MAINTAIN, AND IS
10 NOT LIABLE FOR INJURIES ARISING FROM, A PORTION OF A COUNTY HIGH-
11 WAY OUTSIDE OF THE IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR
12 VEHICULAR TRAVEL, INCLUDING A SIDEWALK, TRAILWAY, CROSSWALK, OR
13 OTHER INSTALLATION. THIS SUBSECTION DOES NOT PREVENT OR LIMIT A
14 MUNICIPAL CORPORATION'S LIABILITY IF BOTH OF THE FOLLOWING ARE
15 TRUE:

16 (A) AT LEAST 30 DAYS BEFORE THE OCCURRENCE OF THE RELEVANT
17 INJURY, DEATH, OR DAMAGE, THE MUNICIPAL CORPORATION KNEW OR, IN
18 THE EXERCISE OF REASONABLE DILIGENCE, SHOULD HAVE KNOWN OF THE
19 EXISTENCE OF A DEFECT IN A SIDEWALK, TRAILWAY, CROSSWALK, OR
20 OTHER INSTALLATION OUTSIDE OF THE IMPROVED PORTION OF THE HIGHWAY
21 DESIGNED FOR VEHICULAR TRAVEL.

22 (B) THE DEFECT DESCRIBED IN SUBDIVISION (A) IS A PROXIMATE
23 CAUSE OF THE INJURY, DEATH, OR DAMAGE.

24 (2) A DISCONTINUITY DEFECT OF LESS THAN 2 INCHES CREATES A
25 REBUTTABLE INFERENCE THAT THE MUNICIPAL CORPORATION MAINTAINED
26 THE SIDEWALK, TRAILWAY, CROSSWALK, OR OTHER INSTALLATION OUTSIDE

HB 4010, As Passed Senate, December 1, 1999

House Bill No. 4010 as amended November 30, 1999

6

1 OF THE IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR VEHICULAR
2 TRAVEL IN REASONABLE REPAIR.

3 (3) A MUNICIPAL CORPORATION'S LIABILITY UNDER SUBSECTION (1) IS
4 LIMITED BY SECTION 81131 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTEC-
5 TION ACT, 1994 PA 451, MCL 324.81131.

6 Enacting section 1. Sections 1 and 2 of 1964 PA 170,
7 MCL 691.1401 and 691.1402, as amended by this amendatory act, and
8 section 2a, as added by this amendatory act,
9 apply only to a cause of action arising on or after the effective
date of this amendatory act.