

HOUSE BILL No. 4494

April 1, 2003, Introduced by Reps. Sheltroun, Lipsey, Condino, Accavitti, Sak, Minore,
Brown, Dennis, Elkins and O'Neil and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) ~~Except as otherwise provided in~~ **Subject to**
2 section 2a, each governmental agency having jurisdiction over a
3 highway ~~shall maintain the highway in reasonable repair so that~~

1 ~~it is reasonably safe and convenient for public travel.~~ has a
2 duty to do all of the following so that the highway is reasonably
3 safe, fit, and convenient for public travel:

4 (a) If the governmental agency undertakes to design or
5 construct the highway, use appropriate standards and care.

6 (b) Maintain the highway in reasonable repair.

7 (c) Provide for, install, and maintain traffic control
8 devices.

9 (2) A person who sustains bodily injury or damage to his or
10 her property ~~by reason of~~ **because of the** failure of a
11 governmental agency to ~~keep a highway under its jurisdiction in~~
12 ~~reasonable repair and in a condition reasonably safe and fit for~~
13 ~~travel~~ **perform a duty under subsection (1)** may recover the
14 damages suffered by him or her from the governmental agency. The
15 liability, procedure, and remedy as to county roads under the
16 jurisdiction of a county road commission shall be as provided in
17 section 21 of chapter IV of 1909 PA 283, MCL 224.21. ~~The~~
18 **Except for the duty to provide, install, and maintain traffic**
19 **control devices, the** duty of the state and the county road
20 commissions to repair, ~~and maintain highways~~ **maintain, design,**
21 **and construct highways under subsection (1),** and the liability
22 for that duty, extends only to the improved portion of the
23 highway designed for vehicular travel, **including, but not limited**
24 **to, a shoulder area adjacent to a travel lane,** and does not
25 include sidewalks, trailways, crosswalks, or any other
26 installation outside of the improved portion of the highway
27 designed for vehicular travel. A judgment against the state

1 based on a claim arising under this section from acts or
2 omissions of the state transportation department is payable only
3 from restricted funds appropriated to the state transportation
4 department or funds provided by its insurer.

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

22 **(4)** ~~-(3)-~~ The contractual undertaking of a governmental
23 agency to maintain a state trunk line highway confers contractual
24 rights only on the state transportation department and does not
25 confer third party beneficiary or other contractual rights in any
26 other person to recover damages to person or property from that
27 governmental agency. This subsection does not relieve the state

1 transportation department of liability it may have, under this
2 section, regarding that highway.

3 (5) ~~-(4)-~~ The duty imposed by this section on a governmental
4 agency is limited by sections 81131 and 82124 of the natural
5 resources and environmental protection act, 1994 PA 451,
6 MCL 324.81131 and 324.82124.

7 Sec. 2a. (1) Except as otherwise provided by this section,
8 a municipal corporation has no duty to repair or maintain, and is
9 not liable for injuries arising from, a portion of a county
10 highway outside of the improved portion of the highway designed
11 for vehicular travel **as described in section 2(2)**, including a
12 sidewalk, trailway, crosswalk, or other installation. This
13 subsection does not prevent or limit a municipal corporation's
14 liability if both of the following are true:

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

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

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

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