

SENATE BILL No. 677

November 12, 2013, Introduced by Senator SCHUITMAKER and referred to the Committee on Local Government and Elections.

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 16, 17, 18, and 19 (MCL 691.1416, 691.1417, 691.1418, and 691.1419), as added by 2001 PA 222.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16. As used in this section and sections 17 to 19:

2 (a) "Affected property" means real property affected by a

1 sewage disposal system event.

2 (b) "Appropriate governmental agency" means a governmental
3 agency that, at the time of a sewage disposal system event, owned
4 or operated, or directly or indirectly discharged into, the portion
5 of the sewage disposal system that allegedly caused damage or
6 physical injury.

7 (c) "Claimant" means a property owner that believes that a
8 sewage disposal system event caused damage to the owner's property,
9 a physically injured individual who believes that a sewage disposal
10 system event caused the physical injury, or a person making a claim
11 on behalf of a property owner or physically injured individual
12 **DESCRIBED IN THIS SUBDIVISION.** Claimant includes a person that is
13 subrogated to a claim of a property owner or physically injured
14 individual described in this subdivision.

15 ~~—— (d) "Contacting agency" means any of the following within a~~
16 ~~governmental agency:~~

17 ~~—— (i) The clerk of the governmental agency.~~

18 ~~—— (ii) If the governmental agency has no clerk, an individual who~~
19 ~~may lawfully be served with civil process directed against the~~
20 ~~governmental agency.~~

21 ~~—— (iii) Any other individual, agency, authority, department,~~
22 ~~district, or office authorized by the governmental agency to~~
23 ~~receive notice under section 19, including, but not limited to, an~~
24 ~~agency, authority, department, district, or office responsible for~~
25 ~~the operation of the sewage disposal system, such as a sewer~~
26 ~~department, water department, or department of public works.~~

27 (D) ~~(e)~~ "Defect" means a ~~construction, design, maintenance,~~

1 operation, or repair defect ONLY.

2 (E) "EXTREME WEATHER EVENT" MEANS RAINFALL AMOUNTING TO 1.4
3 INCHES OR MORE IN ANY 1 HOUR OR 2.9 INCHES OR MORE OF IN ANY 24
4 HOURS AS MEASURED BY A RAIN GAUGE MAINTAINED BY AN APPROPRIATE
5 GOVERNMENTAL AGENCY.

6 (F) "GOVERNMENTAL AGENCY CONTACT" MEANS ANY OF THE FOLLOWING
7 WITHIN A GOVERNMENTAL AGENCY:

8 (i) THE CLERK OF THE GOVERNMENTAL AGENCY.

9 (ii) IF THE GOVERNMENTAL AGENCY HAS NO CLERK, AN INDIVIDUAL WHO
10 MAY LAWFULLY BE SERVED WITH CIVIL PROCESS DIRECTED AGAINST THE
11 GOVERNMENTAL AGENCY.

12 (iii) ANY OTHER INDIVIDUAL, AGENCY, AUTHORITY, DEPARTMENT,
13 DISTRICT, OR OFFICE AUTHORIZED BY THE GOVERNMENTAL AGENCY TO
14 RECEIVE NOTICE UNDER SECTION 19, INCLUDING, BUT NOT LIMITED TO, AN
15 AGENCY, AUTHORITY, DEPARTMENT, DISTRICT, OR OFFICE RESPONSIBLE FOR
16 THE OPERATION OF THE SEWAGE DISPOSAL SYSTEM, SUCH AS A SEWER
17 DEPARTMENT, WATER DEPARTMENT, OR DEPARTMENT OF PUBLIC WORKS.

18 (G) ~~(F)~~ "Noneconomic damages" includes, but is not limited to,
19 pain, suffering, ~~inconvenience~~, physical impairment, disfigurement,
20 mental anguish, emotional distress, loss of society and
21 companionship, loss of consortium, injury to reputation,
22 humiliation, and other nonpecuniary damages.

23 (H) ~~(G)~~ "Person" means an individual, partnership,
24 association, corporation, other legal entity, or a political
25 subdivision.

26 (I) ~~(H)~~ "Serious impairment of body function" means that term
27 as defined in section 3135 of the insurance code of 1956, 1956 PA

1 218, MCL 500.3135.

2 (J) ~~(i)~~—"Service lead" means an instrumentality that connects
 3 an affected property, including a structure, fixture, or
 4 improvement on the property, to the sewage disposal system and that
 5 is neither owned nor maintained by a governmental agency.

6 (K) ~~(j)~~—"Sewage disposal system" means all interceptor sewers,
 7 storm sewers, sanitary sewers, combined sanitary and storm sewers,
 8 sewage treatment plants, and all other plants, works,
 9 instrumentalities, and properties used or useful in connection with
 10 the collection, treatment, and disposal of sewage and industrial
 11 wastes. ~~and~~ **SEWAGE DISPOSAL SYSTEM** includes a storm water drain
 12 system under the jurisdiction and control of a governmental agency.

13 (I) ~~(k)~~—"Sewage disposal system event" or "event" means the
 14 overflow or backup of a sewage disposal system onto real property
 15 **OWNED OR OCCUPIED BY A CLAIMANT**. An overflow or backup is not a
 16 sewage disposal system event if any of the following was a
 17 substantial proximate cause of the overflow or backup:

18 (i) An obstruction in a service lead that was not caused by a
 19 governmental agency.

20 (ii) A connection to the sewage disposal system on the affected
 21 property, including, but not limited to, a sump system, building
 22 drain, surface drain, gutter, or downspout.

23 (iii) An act of war, whether the war is declared or undeclared,
 24 or an act of terrorism.

25 (M) ~~(l)~~—"Substantial proximate cause" means a proximate cause
 26 that was 50% or more of the cause of the event and the property
 27 damage or physical injury.

1 Sec. 17. (1) To afford property owners, individuals, and
2 governmental agencies greater efficiency, certainty, and
3 consistency in the provision of relief for damages or physical
4 injuries caused by a sewage disposal system event, a claimant and a
5 governmental agency subject to a claim shall comply with this
6 section and the procedures in sections 18 and 19.

7 (2) A governmental agency is immune from tort liability for
8 the overflow or backup of a sewage disposal system unless the
9 overflow or backup is a sewage disposal system event and the
10 governmental agency is an appropriate governmental agency. Sections
11 16 to 19 abrogate common law exceptions, if any, to immunity for
12 the overflow or backup of a sewage disposal system and provide the
13 sole remedy for obtaining any form of relief for damages or
14 physical injuries caused by a sewage disposal system event
15 regardless of the legal theory.

16 (3) If a claimant, including a claimant seeking noneconomic
17 damages, believes that an event caused property damage or physical
18 injury, the claimant may seek compensation for the property damage
19 or physical injury from a governmental agency if the claimant shows
20 that all of the following existed at the time of the event:

21 (a) The governmental agency was an appropriate governmental
22 agency.

23 (b) The sewage disposal system had a defect.

24 (c) The governmental agency knew, or in the exercise of
25 reasonable diligence should have known, about the defect.

26 (d) The governmental agency, having the legal authority to do
27 so, failed to take reasonable steps in a reasonable amount of time

1 to repair, correct, or remedy the defect.

2 (e) The defect was a substantial proximate cause of the event
3 and the property damage or physical injury.

4 (4) In addition to the requirements of subsection (3), to
5 obtain compensation for property damage or physical injury from a
6 governmental agency, a claimant must show both of the following:

7 (a) If any of the damaged property is personal property,
8 reasonable proof of ownership and the value of the damaged personal
9 property. Reasonable proof may include testimony or records
10 documenting the ownership, purchase price, or value of the
11 property, or photographic or similar evidence showing the value of
12 the property.

13 (b) ~~The~~ **THAT THE** claimant complied with section 19.

14 (5) **NOTWITHSTANDING SUBSECTIONS (2) AND (3), A GOVERNMENTAL**
15 **AGENCY REMAINS IMMUNE TO LIABILITY UNDER THIS ACT IF THE**
16 **GOVERNMENTAL AGENCY PROVES THAT THE SEWAGE DISPOSAL SYSTEM EVENT**
17 **AFFECTING THE CLAIMANT'S PROPERTY OCCURRED CONTEMPORANEOUSLY WITH**
18 **OR WITHIN 24 HOURS AFTER AN EXTREME WEATHER EVENT.**

19 Sec. 18. (1) Except as provided in subsection (2), economic
20 damages are the only compensation **AVAILABLE** for a claim under
21 section 17. Except as provided in subsection (2), a court shall not
22 award and a governmental agency shall not pay noneconomic damages
23 as compensation for an event.

24 (2) A governmental agency remains subject to tort liability
25 for noneconomic damages caused by an event only if the claimant or
26 the individual on whose behalf the claimant is making the claim has
27 suffered death, serious impairment of body function, or permanent

1 serious disfigurement.

2 (3) In an action for noneconomic damages under section 17, the
3 issues of whether a claimant or the individual on whose behalf the
4 claimant is making the claim has suffered serious impairment of
5 body function or permanent serious disfigurement are questions of
6 law for the court if the court finds either of the following:

7 (a) There is no factual dispute concerning the nature and
8 extent of the claimant's or the individual's injuries.

9 (b) There is a factual dispute concerning the nature and
10 extent of the claimant's or the individual's injuries, but the
11 dispute is not material to determining whether the claimant or the
12 individual has suffered a serious impairment of body function or
13 permanent serious disfigurement.

14 (4) Unless this act provides otherwise, a party to a civil
15 action brought under section 17 has all applicable common law and
16 statutory defenses ordinarily available in civil actions, and is
17 entitled to all rights and procedures available under the Michigan
18 court rules.

19 Sec. 19. (1) Except as provided in subsections (3) and ~~(7)~~,
20 ~~(11)~~, a claimant is not entitled to compensation under section 17
21 unless **WITHIN 45 DAYS AFTER THE DAMAGE OR PHYSICAL INJURY WAS**
22 **DISCOVERED OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE**
23 **BEEN DISCOVERED**, the claimant notifies ~~the~~ **IN WRITING EACH**
24 governmental agency ~~of~~ **AGAINST WHICH THE CLAIMANT INTENDS TO FILE** a
25 claim of damage or physical injury. ~~, in writing, within 45 days~~
26 ~~after the date the damage or physical injury was discovered, or in~~
27 ~~the exercise of reasonable diligence should have been discovered.~~

1 The written notice under this subsection ~~shall~~ **MUST** contain the
 2 content required by subsection (2)(c) and ~~shall be sent to the~~
 3 ~~individual within the~~ **GOVERNMENTAL AGENCY CONTACT AT EACH**
 4 governmental agency ~~designated in subsection (2)(b).~~ **AGAINST WHICH**
 5 **THE CLAIMANT INTENDS TO FILE A CLAIM OF DAMAGE OR PHYSICAL INJURY.**
 6 To facilitate compliance with this section, a governmental agency
 7 ~~owning~~ **THAT OWNS** or ~~operating~~ **OPERATES** a sewage disposal system
 8 shall make available public information about ~~the provision of~~
 9 **PROVIDING A** notice under this section.

10 (2) If a person who owns or occupies affected property
 11 notifies a ~~contacting~~ **GOVERNMENTAL** agency **CONTACT** orally or in
 12 writing of an event before providing **TO THE GOVERNMENTAL AGENCY** a
 13 notice of a claim that complies with subsection (1), the ~~contacting~~
 14 **GOVERNMENTAL** agency shall provide the person with all of the
 15 following information in writing:

16 (a) A sufficiently detailed explanation of the notice
 17 requirements of subsection (1) to allow a claimant to comply with
 18 the requirements.

19 (b) The name and address of the ~~individual within~~ **GOVERNMENTAL**
 20 **AGENCY CONTACT AT** the governmental agency to whom a claimant must
 21 send written notice under subsection (1).

22 (c) The required content of the written notice under
 23 subsection (1), which is limited to the claimant's name, address,
 24 and telephone number, the address of the affected property, the
 25 date of discovery of any property damages or physical injuries, and
 26 a brief description of the claim.

27 (3) A claimant's failure to comply with the notice

1 requirements of subsection (1) **WITH RESPECT TO A SPECIFIC**
 2 **GOVERNMENTAL AGENCY** does not bar the claimant from bringing a civil
 3 action under section 17 against a ~~THE~~ governmental agency notified
 4 ~~under subsection (2)~~ if the claimant can show both of the
 5 following:

6 (a) ~~The~~ **THAT THE** claimant notified the ~~contacting~~ **GOVERNMENTAL**
 7 agency **CONTACT** under subsection (2) during the period for giving
 8 notice under subsection (1).

9 (b) ~~The~~ **THAT THE** claimant's failure to comply with the notice
 10 requirements of subsection (1) resulted from the ~~contacting~~
 11 **GOVERNMENTAL** agency's failure to comply with subsection (2).

12 (4) If a governmental agency that is notified of a claim under
 13 subsection (1) believes that a different or additional governmental
 14 agency may be responsible for the claimed property damages or
 15 physical injuries, the governmental agency ~~shall~~ **MAY** notify ~~the~~
 16 ~~contacting agency of~~ each additional or different governmental
 17 agency of that fact, in writing, within 15 business days after the
 18 date the governmental agency receives the claimant's notice under
 19 subsection (1). This subsection is intended to allow a different or
 20 additional governmental agency to inspect a claimant's property or
 21 investigate a claimant's physical injury before litigation. Failure
 22 by a governmental agency to provide notice under this subsection to
 23 a different or additional governmental agency does not bar a civil
 24 action by the governmental agency against the different or
 25 additional governmental agency.

26 (5) If a governmental agency receives a notice from a
 27 claimant, ~~or a different or additional governmental agency that~~

~~complies with this section,~~ the governmental agency receiving notice may inspect the damaged property or investigate the physical injury. A claimant or the owner or occupant of affected property shall not unreasonably refuse to allow a governmental agency subject to a claim to inspect damaged property or investigate a physical injury. This subsection does not prohibit a governmental agency from subsequently inspecting damaged property or investigating a physical injury during a civil action brought under section 17.

(6) A GOVERNMENTAL AGENCY MAY ADOPT AN ORDINANCE THAT PROVIDES FOR THE ADMINISTRATIVE ADJUDICATION OF SEWAGE DISPOSAL EVENT CLAIMS BEFORE A NEUTRAL HEARING OFFICER WHO IS LICENSED AS A PROFESSIONAL ENGINEER UNDER ARTICLE 20 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2001 TO 339.2014. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8), IF A GOVERNMENTAL AGENCY ADOPTS AN ORDINANCE UNDER THIS SUBSECTION, ADMINISTRATIVE ADJUDICATION OF THE CLAIM IS THE EXCLUSIVE REMEDY AVAILABLE FOR A CLAIM UNDER SECTION 17.

(7) ~~(6)~~ If a governmental agency notified of a claim under subsection (1) and a claimant do not reach an agreement on the amount of compensation for the property damage or physical injury within 45 days after the receipt of notice under this section, the claimant may institute a civil action. A civil action shall not be commenced under section 17 until after that 45 days. GOVERNMENTAL AGENCY HAS ADOPTED AN ORDINANCE UNDER SUBSECTION (6), AND THE CLAIMANT REQUESTS AN ADJUDICATIVE HEARING WITHIN 21 DAYS AFTER THE 45 DAYS, THE GOVERNMENTAL AGENCY SHALL SCHEDULE A HEARING TO BE COMMENCED WITHIN 120 DAYS BEFORE A NEUTRAL HEARING OFFICER

1 APPOINTED BY THE GOVERNMENTAL AGENCY. A CLAIMANT IS NOT ENTITLED TO
2 COMPENSATION UNDER SECTION 17 IF THE CLAIMANT FAILS TO REQUEST AN
3 ADMINISTRATIVE HEARING WITHIN THE TIME PROVIDED BY THIS SUBSECTION.

4 (8) A GOVERNMENTAL AGENCY SHALL GIVE A CLAIMANT WRITTEN NOTICE
5 OF THE DATE, TIME, AND PLACE OF A HEARING UNDER SUBSECTION (7). AT
6 THE HEARING, THE CLAIMANT AND THE GOVERNMENTAL AGENCY MAY BE
7 REPRESENTED BY COUNSEL AND MAY PRESENT EVIDENCE CONCERNING THE
8 CLAIM. THE HEARING OFFICER SHALL NOT CONSIDER CLAIMS FOR
9 NONECONOMIC DAMAGES. THE HEARING OFFICER SHALL DETERMINE WHETHER
10 THE CLAIMANT IS ENTITLED TO RELIEF UNDER SECTION 17 AND THE AMOUNT
11 OF PROPERTY DAMAGES AND ECONOMIC DAMAGES, IF ANY. THE HEARING
12 OFFICER SHALL PROVIDE THE PARTIES WITH A WRITTEN OPINION THAT
13 CONTAINS THE HEARING OFFICER'S FINDINGS OF FACT ON WHICH THE
14 OPINION IS BASED. THE HEARING OFFICER'S DECISION IS FINAL, EXCEPT
15 THAT A PARTY MAY APPEAL THE HEARING OFFICER'S DECISION TO THE
16 CIRCUIT COURT ON THE RECORD MADE BEFORE THE HEARING OFFICER.

17 (9) IF A GOVERNMENTAL AGENCY HAS NOT ADOPTED AN ORDINANCE
18 UNDER SUBSECTION (6), A CLAIMANT MAY INSTITUTE A CIVIL ACTION UNDER
19 SECTION 17. THE ACTION MAY NOT BE COMMENCED UNTIL 45 DAYS AFTER THE
20 GOVERNMENTAL AGENCY RECEIVES NOTICE UNDER THIS SECTION.

21 (10) EXCEPT FOR CLAIMS TO WHICH SUBSECTION (3) APPLIES, CLAIMS
22 FOR WHICH A HEARING IS NOT ALLOWED UNDER SUBSECTION (7), AND CLAIMS
23 FOR NONECONOMIC DAMAGES, A CLAIMANT SHALL NOT COMMENCE A CIVIL
24 ACTION UNDER SECTION 17 AND THE PROCEDURES CONTAINED IN THIS
25 SECTION ARE THE SOLE AND EXCLUSIVE REMEDY FOR ALL CLAIMS UNDER
26 SECTION 17.

27 (11) ~~(7)~~—This section does not apply to claims for noneconomic

1 damages made under section 17.

2 Enacting section 1. Sections 16, 17, 18, and 19 of 1964 PA
3 170, MCL 691.1416, 691.1417, 691.1418, and 691.1419, as amended by
4 this amendatory act apply only to claims for which the first notice
5 under section 19(1) of 1964 PA 170, MCL 691.1419, is sent after
6 July 1, 2014.