

HOUSE BILL No. 4686

June 4, 2015, Introduced by Reps. Santana, Durhal, Byrd, Gay-Dagnogo, Banks and Garrett
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 section 2a (MCL 691.1402a), as amended by 2012 PA 50.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2a. (1) A municipal corporation in which a sidewalk is
2 installed adjacent to a municipal, county, or state highway shall

1 maintain the sidewalk in reasonable repair.

2 (2) A municipal corporation is not liable for breach of a duty
3 to maintain a sidewalk unless the plaintiff proves that at least 30
4 days before the occurrence of the relevant injury, death, or
5 damage, the municipal corporation knew or, in the exercise of
6 reasonable diligence, should have known of the existence of the
7 defect in the sidewalk.

8 (3) In a civil action, a municipal corporation that has a duty
9 to maintain a sidewalk under subsection (1) is presumed to have
10 maintained the sidewalk in reasonable repair. This presumption may
11 only be rebutted by evidence of facts showing that a proximate
12 cause of the injury was 1 or both of the following:

13 (a) A vertical discontinuity defect of 2 inches or more in the
14 sidewalk.

15 (b) A dangerous condition in the sidewalk itself of a
16 particular character other than solely a vertical discontinuity.

17 (4) Whether a presumption under subsection (3) has been
18 rebutted is a question of law for the court.

19 **(5) IN A CIVIL ACTION, A MUNICIPAL CORPORATION THAT HAS A DUTY**
20 **TO MAINTAIN A SIDEWALK UNDER SUBSECTION (1) MAY ASSERT, IN ADDITION**
21 **TO ANY OTHER DEFENSE AVAILABLE TO IT, ANY DEFENSE AVAILABLE UNDER**
22 **THE COMMON LAW WITH RESPECT TO A PREMISES LIABILITY CLAIM,**
23 **INCLUDING, BUT NOT LIMITED TO, A DEFENSE THAT THE CONDITION WAS**
24 **OPEN AND OBVIOUS.**

25 (6) ~~(5)~~ A municipal corporation's liability under subsection
26 (1) is limited by section 81131 of the natural resources and
27 environmental protection act, 1994 PA 451, MCL 324.81131.