

**SUBSTITUTE FOR
HOUSE BILL NO. 5282**

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, and 19 (MCL 691.1416, 691.1417, 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~~ **PERSON WHO OWNS OR**
8 **OCCUPIES AFFECTED REAL PROPERTY AND WHO** believes that a sewage
9 disposal system event caused damage to the ~~owner's~~ **PERSON'S**
10 property, a physically injured individual who believes that a
11 sewage disposal system event caused the physical injury, or a
12 person making a claim on behalf of a property owner or physically
13 injured individual. Claimant includes a person that is subrogated
14 to a claim of a property owner or physically injured individual
15 described in this subdivision.

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

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

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

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

1 (D) ~~(e)~~ "Defect" means a construction, design, maintenance,
2 operation, or repair defect.

3 (E) "GOVERNMENTAL AGENCY CONTACT" MEANS ANY OF THE FOLLOWING
4 WITHIN A GOVERNMENTAL AGENCY:

5 (i) THE CLERK OF THE GOVERNMENTAL AGENCY.

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

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

15 (f) "Noneconomic damages" includes, but is not limited to,
16 pain, suffering, inconvenience, physical impairment, disfigurement,
17 mental anguish, emotional distress, loss of society and
18 companionship, loss of consortium, injury to reputation,
19 humiliation, and other nonpecuniary damages.

20 (g) "Person" means an individual, partnership, association,
21 corporation, other legal entity, or a political subdivision.

22 (h) "Serious impairment of body function" means that term as
23 defined in section 3135 of the insurance code of 1956, 1956 PA 218,
24 MCL 500.3135.

25 (i) "Service lead" means an instrumentality that connects an
26 affected property, including a structure, fixture, or improvement
27 on the property, to the sewage disposal system and that is neither

1 owned nor maintained by a governmental agency.

2 (j) "Sewage disposal system" means all interceptor sewers,
3 storm sewers, sanitary sewers, combined sanitary and storm sewers,
4 sewage treatment plants, and all other plants, works,
5 instrumentalities, and properties used or useful in connection with
6 the collection, treatment, and disposal of sewage and industrial
7 wastes, and includes a storm water drain system under the
8 jurisdiction and control of a governmental agency.

9 (k) "Sewage disposal system event" or "event" means the
10 overflow or backup of a sewage disposal system onto real property
11 **OWNED OR OCCUPIED BY A CLAIMANT EXCEPT WHEN RAINFALL, AS MEASURED**
12 **BY A GENERALLY RECOGNIZED AND ACCEPTED METHOD, AT OR NEAR THE**
13 **AFFECTED AREA OR WITHIN THE SEWAGE DISPOSAL SYSTEM SERVICE AREA WAS**
14 **1.7 INCHES OR MORE IN ANY 1-HOUR PERIOD OR WAS 3.3 INCHES OR MORE**
15 **IN A CONTINUOUS 24-HOUR PERIOD.** 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
21 affected property, including, but not limited to, a sump system,
22 building drain, surface drain, gutter, or downspout.

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

25 (l) "Substantial proximate cause" means a proximate cause that
26 was 50% or more of the cause of the event and the property damage
27 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, **AND THE**
 11 **CLAIMANT MEETS THE REQUIREMENTS OF SUBSECTIONS (3) AND (4) .**

12 Sections 16 to 19 abrogate common law exceptions, if any, to
 13 immunity for the overflow or backup of a sewage disposal system and
 14 provide the sole remedy for obtaining any form of relief for
 15 damages or physical injuries caused by a sewage disposal system
 16 event regardless of the legal theory.

17 (3) ~~If a claimant, including a claimant seeking~~ **TO OBTAIN**
 18 **COMPENSATION, INCLUDING** noneconomic damages, ~~believes that an event~~
 19 ~~caused property damage or physical injury, the claimant may seek~~
 20 ~~compensation for the property damage or physical injury from a~~
 21 ~~governmental agency, if the claimant shows~~ **A CLAIMANT MUST SHOW**
 22 that all of the following ~~existed~~ **APPLIED** at the time of the event:

23 (a) The governmental agency was an appropriate governmental
 24 agency.

25 (b) The sewage disposal system had a defect, **SUBJECT TO**
 26 **SUBSECTION (5) .**

27 (c) The governmental agency knew, or in the exercise of

1 reasonable diligence should have known, about the defect.

2 (d) The governmental agency, having the legal authority to do
3 so, failed to take reasonable steps in a reasonable amount of time
4 to repair, correct, or remedy the defect.

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

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

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

16 (b) The claimant complied with section 19.

17 **(5) A PART OF A SEWAGE DISPOSAL SYSTEM DOES NOT HAVE A DESIGN**
18 **DEFECT OR CONSTRUCTION DEFECT IF IT WAS DESIGNED AND CONSTRUCTED**
19 **ACCORDING TO APPLICABLE STATE STANDARDS OR REQUIREMENTS AS SET**
20 **FORTH IN A STATE STATUTE, RULE, OR PERMIT, OR IN ANY COURT ORDER,**
21 **ADMINISTRATIVE ORDER, OR CONSENT ORDER IN EFFECT WHEN THE PART OF**
22 **THE SEWAGE DISPOSAL SYSTEM WAS CONSTRUCTED OR IMPROVED. THE**
23 **DETERMINATION OF WHAT STANDARDS AND REQUIREMENTS MEET THE**
24 **CONDITIONS OF THIS SUBSECTION SHALL BE MADE BY A COURT AS A MATTER**
25 **OF LAW.**

26 Sec. 19. (1) Except as provided in subsections (3) and (7), a
27 claimant is not entitled to compensation under section 17 unless

1 the claimant notifies the governmental agency of a claim of damage
2 or physical injury, in writing, within 45 days after the date the
3 damage or physical injury was discovered, or in the exercise of
4 reasonable diligence should have been discovered. The written
5 notice under this subsection shall contain the content required by
6 subsection (2)(c) and shall be sent to the ~~individual within the~~
7 governmental agency **CONTACT** designated ~~in~~ **UNDER** subsection (2)(b).
8 To facilitate compliance with this section, a governmental agency
9 owning or operating a sewage disposal system shall make available
10 public information about the provision of notice under this
11 section.

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

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

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

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

1 a brief description of the claim.

2 (3) A claimant's failure to comply with the notice
3 requirements of subsection (1) does not bar the claimant from
4 bringing a civil action under section 17 against a governmental
5 agency notified under subsection (2) if the claimant can show both
6 of the following:

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

10 (b) The claimant's failure to comply with the notice
11 requirements of subsection (1) resulted from the ~~contacting~~
12 ~~agency's~~ **GOVERNMENTAL AGENCY CONTACT'S** failure to comply with
13 subsection (2).

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

1 (5) If a governmental agency receives a notice from a claimant
2 or a different or additional governmental agency that complies with
3 this section, the governmental agency receiving notice may inspect
4 the damaged property or investigate the physical injury. A claimant
5 or the owner or occupant of affected property shall not
6 unreasonably refuse to allow a governmental agency subject to a
7 claim to inspect damaged property or investigate a physical injury.
8 This subsection does not prohibit a governmental agency from
9 subsequently inspecting damaged property or investigating a
10 physical injury during a civil action brought under section 17.

11 (6) If a governmental agency notified of a claim under
12 subsection (1) and a claimant do not reach an agreement on the
13 amount of compensation for the property damage or physical injury
14 within 45 days after the receipt of notice under this section, the
15 claimant may institute a civil action. A civil action shall not be
16 commenced under section 17 until after that 45 days.

17 (7) This section does not apply to claims for noneconomic
18 damages made under section 17.

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.