

# HOUSE BILL No. 5282

February 2, 2016, Introduced by Reps. Webber, Lauwers and Hughes and referred to the Committee on Local Government.

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  
3       sewage disposal system event.

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

(c) "Claimant" means a ~~property owner that~~ **PERSON WHO OWNS OR OCCUPIES AFFECTED REAL PROPERTY AND WHO** believes that a sewage disposal system event caused damage to the ~~owner's~~ **PERSON'S** property, a physically injured individual who believes that a sewage disposal system event caused the physical injury, or a person making a claim on behalf of a property owner or physically injured individual. Claimant includes a person that is subrogated to a claim of a property owner or physically injured individual described in this subdivision.

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

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

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

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

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

1 operation, or repair defect THAT OCCURS AFTER JANUARY 2, 2002.

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

4 (i) THE CLERK OF THE GOVERNMENTAL AGENCY.

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

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

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

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

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

24 (i) "Service lead" means an instrumentality that connects an  
25 affected property, including a structure, fixture, or improvement  
26 on the property, to the sewage disposal system and that is neither  
27 owned nor maintained by a governmental agency.

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

(k) "Sewage disposal system event" or "event" means the overflow or backup of a sewage disposal system onto real property **OWNED OR OCCUPIED BY A CLAIMANT AND OCCURRING WHEN RAINFALL, AS MEASURED BY A GENERALLY RECOGNIZED AND ACCEPTED METHOD, AT OR NEAR THE AFFECTED AREA OR WITHIN THE SEWAGE DISPOSAL SYSTEM SERVICE AREA WAS LESS THAN 1.7 INCHES IN ANY 1-HOUR PERIOD OR LESS THAN 3.3 INCHES IN ANY CONTINUOUS 24-HOUR PERIOD.** An overflow or backup is not a sewage disposal system event if any of the following was a substantial proximate cause of the overflow or backup:

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

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

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

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

Sec. 17. (1) To afford property owners, individuals, and

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

6 (2) A governmental agency is immune from tort liability for  
7 the overflow or backup of a sewage disposal system unless the  
8 overflow or backup is a sewage disposal system event, ~~and the~~  
9 governmental agency is an appropriate governmental agency, **AND THE**  
10 **CLAIMANT MEETS THE REQUIREMENTS OF SUBSECTIONS (3) AND (4).**

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

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

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

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

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

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

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

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

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

15 (b) The claimant complied with section 19.

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

25 Sec. 19. (1) Except as provided in subsections (3) and (7), a  
26 claimant is not entitled to compensation under section 17 unless  
27 the claimant notifies ~~the~~**IN WRITING EACH** governmental agency ~~of~~

1 **AGAINST WHICH THE CLAIMANT INTENDS TO FILE** a claim of damage or  
2 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 NOTICE GIVEN BY ONE GOVERNMENTAL AGENCY TO ANOTHER GOVERNMENTAL  
2 AGENCY DOES NOT SATISFY OR WAIVE A CLAIMANT'S OBLIGATION TO GIVE  
3 NOTICE THAT COMPLIES WITH SUBSECTION (1) TO THE OTHER GOVERNMENTAL  
4 AGENCY.

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

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

21 (7) ~~This~~ **EXCEPT FOR SUBSECTION (4), THIS** section does not  
22 apply to claims for noneconomic damages made under section 17.

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