



SENATE BILL No. 353

March 1, 1995, Introduced by Senators STILLE, NORTH, SHUGARS, GAST, GOUGEON, ROGERS, STEIL, EMMONS, MC MANUS and BENNETT and referred to the Committee on Judiciary.

A bill to amend the title and sections 1, 2, and 4 of Act No. 170 of the Public Acts of 1964, entitled as amended

"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 and paying damages sought or awarded against them; to provide for the legal defense of public officers and employees; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal certain acts and parts of acts,"

section 1 as amended by Act No. 175 of the Public Acts of 1986 and section 2 as amended by Act No. 278 of the Public Acts of 1990, being sections 691.1401, 691.1402, and 691.1404 of the Michigan Compiled Laws; and to add sections 2a and 2b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 2, and 4 of Act
2 No. 170 of the Public Acts of 1964, section 1 as amended by Act
3 No. 175 of the Public Acts of 1986 and section 2 as amended by
4 Act No. 278 of the Public Acts of 1990, being sections 691.1401,
5 691.1402, and 691.1404 of the Michigan Compiled Laws, are amended
6 and sections 2a and 2b are added to read as follows:

TITLE

7
8 An act to ~~make uniform~~ DEFINE AND LIMIT the liability of
9 municipal corporations, political subdivisions, and the state,
10 its agencies and departments, officers, employees, and volunteers
11 thereof, and members of certain boards, councils, and task forces
12 when engaged in the exercise or discharge of a governmental func-
13 tion, for injuries to property and persons; ~~to define and limit~~
14 ~~this liability;~~ to define and limit the liability of the state
15 when engaged in a proprietary function; to authorize the purchase
16 of liability insurance to protect against loss arising out of
17 this liability; to provide for defending certain claims made
18 against public officers and paying damages sought or awarded
19 against them; to provide for the legal defense of public officers
20 and employees; to provide for reimbursement of public officers
21 and employees for certain legal expenses; and to repeal ~~certain~~
22 acts and parts of acts.

23 Sec. 1. As used in this act:

24 (A) "CONSUMER PRICE INDEX" MEANS THE MOST COMPREHENSIVE
25 INDEX OF CONSUMER PRICES AVAILABLE FOR THIS STATE FROM THE BUREAU
26 OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR.

1 (B) "GOVERNMENTAL AGENCY" MEANS THE STATE, A POLITICAL
2 SUBDIVISION, OR A MUNICIPAL CORPORATION.

3 (C) "GOVERNMENTAL FUNCTION" IS AN ACTIVITY THAT IS EXPRESSLY
4 OR IMPLIEDLY MANDATED OR AUTHORIZED BY CONSTITUTION, STATUTE,
5 LOCAL CHARTER OR ORDINANCE, OR OTHER LAW.

6 (D) "HIGHWAY" MEANS A PUBLIC HIGHWAY, ROAD, OR STREET THAT
7 IS OPEN FOR PUBLIC TRAVEL. HIGHWAY INCLUDES BRIDGES, SIDEWALKS,
8 CROSSWALKS, AND CULVERTS ON THE HIGHWAY. HIGHWAY DOES NOT
9 INCLUDE ALLEYS, PARKING LOTS, ROADSIDE REST AREAS, TREES, OR
10 UTILITY POLES.

11 (E) "IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR VEHICULAR
12 TRAVEL" MEANS THE PHYSICAL STRUCTURE OF THE TRAVELED PORTION,
13 PAVED OR UNPAVED, OF THE ROADBED ACTUALLY DESIGNED FOR PUBLIC
14 VEHICULAR TRAVEL. BY WAY OF ILLUSTRATION, AND NOT LIMITATION,
15 IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR VEHICULAR TRAVEL
16 DOES NOT INCLUDE SHOULDERS, CURBS, VEGETATION, TREES, UTILITY
17 POLES, MEDIANS, SIDEWALKS, CROSSWALKS, CULVERTS, GUARDRAILS, BAR-
18 RIERS, TRAFFIC CONTROL DEVICES, SIGNS, LIGHTING, OR OTHER INSTAL-
19 LATION OR CONDITION LOCATED OUTSIDE OF THE IMPROVED PORTION OF
20 THE HIGHWAY DESIGNED FOR VEHICULAR TRAVEL.

21 (F) "JURISDICTION" MEANS INCLUSION OF A HIGHWAY IN A GOVERN-
22 MENTAL AGENCY SYSTEM UNDER SECTIONS 1 TO 9 OF ACT NO. 51 OF THE
23 PUBLIC ACTS OF 1951, BEING SECTIONS 247.651 TO 247.659 OF THE
24 MICHIGAN COMPILED LAWS.

25 (G) ~~(a)~~ "Municipal corporation" means ~~any~~ A city, vil-
26 lage, township, or charter township, or ~~any~~ A combination
27 ~~thereof~~ OF ANY OF THESE, when acting jointly.

1 (H) ~~(b)~~ "Political subdivision" means ~~any~~ A municipal
2 corporation, county, county road commission, ~~township, charter~~
3 ~~township,~~ school district, community college district, port dis-
4 trict, ~~or~~ metropolitan district, OR transportation authority,
5 or ~~any~~ A combination ~~thereof~~ OF ANY OF THESE, when acting
6 jointly; ~~, and any~~ A district or authority authorized by law or
7 formed by 1 or more political subdivisions; ~~, and any~~ OR AN
8 agency, department, court, board, or council of a political
9 subdivision.

10 (I) ~~(c)~~ "State" means the state of Michigan and its agen-
11 cies, departments, commissions, courts, boards, councils, AND
12 statutorily created task forces. ~~, and shall include every~~
13 STATE INCLUDES A public university ~~and~~ OR college of the state,
14 whether established as a constitutional corporation or
15 otherwise.

16 ~~(d) "Governmental agency" means the state, political subdi-~~
17 ~~visions, and municipal corporations.~~

18 ~~(e) "Highway" means every public highway, road, and street~~
19 ~~which is open for public travel and shall include bridges, side-~~
20 ~~walks, crosswalks, and culverts on any highway. The term highway~~
21 ~~does not include alleys, trees, and utility poles.~~

22 ~~(f) "Governmental function" is an activity which is~~
23 ~~expressly or impliedly mandated or authorized by constitution,~~
24 ~~statute, local charter or ordinance, or other law.~~

25 (J) ~~(g)~~ "Volunteer" means an individual who is specifi-
26 cally designated as ~~such~~ A VOLUNTEER and who is acting solely
27 on behalf of a governmental agency.

1 (K) "VERDICT" MEANS THE TOTAL OF ALL OF THE FOLLOWING:

2 (i) DAMAGES.

3 (ii) INTEREST.

4 (iii) FEES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY AND
5 EXPERT FEES.

6 (iv) COSTS.

7 (v) AN UNCOLLECTIBLE AMOUNT REALLOCATED UNDER SECTION 6304
8 OF THE REVISED JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC
9 ACTS OF 1961, BEING SECTION 600.6304 OF THE MICHIGAN COMPILED
10 LAWS.

11 Sec. 2. (1) ~~Each~~ SUBJECT TO SUBSECTIONS (3) AND (7), EACH
12 governmental agency having jurisdiction over ~~any~~ A highway
13 shall maintain the highway in reasonable repair so that it is
14 reasonably safe and convenient for public travel. ~~Any~~ A person
15 sustaining bodily injury or damage to his or her property by
16 reason of failure of ~~any~~ A governmental agency to keep ~~any~~ A
17 highway under its jurisdiction in reasonable repair, and in con-
18 dition reasonably safe and fit for travel, may recover the dam-
19 ages suffered by him or her from the governmental agency. A
20 PERSON SHALL NOT MAINTAIN A SEPARATE ACTION UNDER THIS SECTION
21 AGAINST AN EMPLOYEE OR AGENT OF A GOVERNMENTAL AGENCY.

22 (2) The liability, procedure, and remedy as to county roads
23 under the jurisdiction of a county road commission shall be as
24 provided in section 21 of chapter IV of Act No. 283 of the Public
25 Acts of 1909, ~~as amended,~~ being section 224.21 of the Michigan
26 Compiled Laws.

1 (3) The duty of the state and the county road commissions to
2 repair and maintain highways, and the liability ~~therefor, shall~~
3 ~~extend~~ FOR THAT DUTY, EXTENDS only to the improved portion of
4 the highway designed for vehicular travel and ~~shall not include~~
5 ~~sidewalks, crosswalks, or any other installation outside of the~~
6 ~~improved portion of the highway designed for vehicular travel~~
7 REQUIRES ONLY THAT IT BE REASONABLY SAFE AND FIT FOR PUBLIC
8 VEHICULAR TRAVEL. ~~No action shall be brought against the state~~
9 ~~under this section except for injury or loss suffered on or after~~
10 ~~July 1, 1965. Any~~

11 (4) A judgment against the state based on a claim arising
12 under this section from acts or omissions of the state transpor-
13 tation department ~~shall be~~ IS payable only from restricted
14 funds appropriated to the state transportation department or
15 funds provided by its insurer.

16 (5) ~~(2)~~ If the state transportation department contracts
17 with another governmental agency to perform work on A state
18 trunkline ~~highways~~ HIGHWAY, an action brought under this sec-
19 tion for tort liability arising out of the performance of that
20 work shall be brought only against the state transportation
21 department under the same circumstances and to the same extent as
22 if the work had been performed by employees of the state trans-
23 portation department. The state transportation department ~~shall~~
24 ~~have~~ HAS the same defenses to the suit as it would have had if
25 the work had been performed by its own employees. If an action
26 described in this subsection could have been maintained against
27 the state transportation department, it may not be maintained

1 against the governmental agency that performed the work for the
2 state transportation department. The governmental agency also
3 ~~shall have~~ HAS the same defenses ~~which~~ THAT could have been
4 asserted by the state transportation department had the action
5 been brought against the state transportation department.

6 (6) ~~(3)~~ The contractual undertaking of a governmental
7 agency to maintain a state trunkline highway confers contractual
8 rights only on the state transportation department and does not
9 confer third party beneficiary or other contractual rights in any
10 other person to recover damages to person or property from that
11 governmental agency. This subsection does not relieve the state
12 transportation department of ~~any~~ liability it may have, under
13 this section, regarding that highway.

14 (7) ONLY THE GOVERNMENTAL AGENCY THAT HAS JURISDICTION OVER
15 THE HIGHWAY AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE
16 INJURY IS LIABLE IN AN ACTION UNDER THIS SECTION.

17 SEC. 2A. (1) IN AN ACTION UNDER SECTION 2 AND SUBJECT TO
18 SUBSECTION (4), THE VERDICT AMOUNT RECOVERABLE FROM ALL GOVERN-
19 MENTAL AGENCIES SHALL NOT EXCEED THE LOWEST OF THE FOLLOWING THAT
20 IS APPROPRIATE UNDER THE FACTS OF THAT ACTION:

21 (A) NOT MORE THAN \$300,000.00 FOR ALL CLAIMS BY AN INDIVID-
22 UAL OR THE INDIVIDUAL'S ESTATE FOR BODILY INJURY OR FOR DAMAGE TO
23 THE INDIVIDUAL'S PROPERTY AND ANY OTHER CLAIMS BY OTHER PERSONS
24 ARISING OUT OF THE SAME INJURY OR DAMAGE.

25 (B) NOT MORE THAN \$200,000.00 FOR ALL CLAIMS BY AN INDIVID-
26 UAL OR THE INDIVIDUAL'S ESTATE FOR BODILY INJURY OR FOR DAMAGE TO
27 THE INDIVIDUAL'S PROPERTY AND ANY OTHER CLAIMS BY OTHER PERSONS

1 ARISING OUT OF THE SAME INJURY OR DAMAGE, IF THE INDIVIDUAL UPON
2 WHOSE INJURY OR DAMAGE THE CLAIMS ARE BASED WAS ALL OF THE FOL-
3 LOWING AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE INJURY
4 OR DAMAGE:

5 (i) SIXTEEN YEARS OF AGE OR OLDER.

6 (ii) THE DRIVER OR A PASSENGER IN THE FRONT SEAT OF THE
7 VEHICLE.

8 (iii) NOT WEARING A SAFETY BELT. THE LIMITATION PRESCRIBED
9 BY THIS SUBPARAGRAPH APPLIES REGARDLESS OF WHETHER THE FAILURE TO
10 WEAR A SAFETY BELT WAS A PROXIMATE CAUSE OF THE INJURY.

11 (C) NOT MORE THAN \$100,000.00 FOR ALL CLAIMS BY AN INDIVID-
12 UAL OR THE INDIVIDUAL'S ESTATE FOR BODILY INJURY OR FOR DAMAGE TO
13 THE INDIVIDUAL'S PROPERTY AND ANY OTHER CLAIMS BY OTHER PERSONS
14 ARISING OUT OF THE SAME INJURY OR DAMAGE, IF THE DRIVER OF THE
15 VEHICLE AT THE TIME OF THE OCCURRENCE IS UNDER THE INFLUENCE OF
16 INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE, OR A COMBINATION
17 OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE, IS IMPAIRED,
18 OR HAS A BLOOD ALCOHOL CONTENT OF 0.07% OR MORE BY WEIGHT OF
19 ALCOHOL. THE LIMITATION PRESCRIBED BY THIS SUBDIVISION APPLIES
20 REGARDLESS OF WHETHER THE DRIVER'S CONDITION WAS A PROXIMATE
21 CAUSE OF THE INJURY.

22 (2) IN AN ACTION UNDER SECTION 2, A LIMITATION PRESCRIBED BY
23 THIS SECTION APPLIES TO THE AGGREGATED AMOUNT OF CLAIMS BY AN
24 INDIVIDUAL OR THE INDIVIDUAL'S ESTATE FOR BODILY INJURY OR FOR
25 DAMAGE TO THE INDIVIDUAL'S PROPERTY AND CLAIMS BY OTHER PERSONS
26 ARISING OUT OF THE SAME INJURY OR DAMAGE. A LIMITATION DOES NOT
27 APPLY SEPARATELY TO EACH PERSON CLAIMING DAMAGES.

1 (3) THE COURT OR COUNSEL FOR A PARTY IN AN ACTION UNDER
2 SECTION 2 SHALL NOT ADVISE THE JURY OF THE LIMITATIONS PRESCRIBED
3 BY THIS SECTION. SUBJECT TO SECTION 2B, IF A LIMITATION PRE-
4 SCRIBED BY THIS SECTION APPLIES, THE COURT SHALL SET ASIDE THE
5 AMOUNT OF THE VERDICT THAT IS IN EXCESS OF THE LIMITATION.

6 (4) THE LIMITATIONS PRESCRIBED BY THIS SECTION SHALL BE
7 ADJUSTED AT THE END OF EACH CALENDAR YEAR BY AN AMOUNT THAT
8 REFLECTS THE CUMULATIVE ANNUAL PERCENTAGE CHANGE IN THE CONSUMER
9 PRICE INDEX.

10 SEC. 2B. BEFORE THE COURT APPLIES A LIMITATION PRESCRIBED
11 BY SECTION 2A TO A VERDICT, THE TRIER OF FACT SHALL CONSIDER THE
12 PLAINTIFF'S NEGLIGENCE AT THE TIME OF THE OCCURRENCE THAT
13 RESULTED IN THE INJURY AND SHALL REDUCE THE PLAINTIFF'S VERDICT
14 IN PROPORTION TO THE AMOUNT THAT THE PLAINTIFF'S NEGLIGENCE WAS A
15 PROXIMATE CAUSE OF THE INJURY. UNDER THIS SECTION, A PLAINTIFF'S
16 NEGLIGENCE INCLUDES, BUT IS NOT LIMITED TO, A FINDING THAT 1 OR
17 BOTH OF THE FOLLOWING WERE TRUE AT THE TIME OF THE OCCURRENCE
18 THAT RESULTED IN THE INJURY:

19 (A) THE PLAINTIFF WAS NOT WEARING A SAFETY BELT.

20 (B) THE PLAINTIFF OR, IF THE PLAINTIFF WAS A PASSENGER IN A
21 VEHICLE, THE DRIVER OF THE VEHICLE IS UNDER THE INFLUENCE OF
22 INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE, OR A COMBINATION
23 OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE, IS IMPAIRED,
24 OR HAS A BLOOD ALCOHOL CONTENT OF 0.07% OR MORE BY WEIGHT OF
25 ALCOHOL.

26 Sec. 4. (1) ~~As a condition to any recovery~~ EXCEPT AS
27 PROVIDED IN SUBSECTION (3), AN INJURED PERSON SHALL NOT RECOVER

1 for injuries sustained by reason of ~~any~~ A defective highway ~~,~~
 2 ~~the injured person~~ UNLESS, within ~~+20-~~ 180 days ~~from~~ AFTER
 3 the time the injury ~~occurred, except as otherwise provided in~~
 4 ~~subsection (3) shall serve~~ OCCURS, THE INJURED PERSON SERVES a
 5 notice on the governmental agency of the occurrence of the injury
 6 and the defect. The notice shall specify the exact location and
 7 nature of the defect, the injury sustained, and the names of the
 8 witnesses known at the time by the claimant.

9 (2) ~~The~~ OTHER THAN NOTICE TO THE STATE, THE notice may be
 10 served ~~upon any individual,~~ either personally ~~,~~ or by certi-
 11 fied mail, return receipt requested, UPON ANY INDIVIDUAL who may
 12 lawfully be served with civil process directed against the gov-
 13 ernmental agency, anything to the contrary in the charter of
 14 ~~any~~ A municipal corporation notwithstanding. ~~In case of the~~
 15 ~~state, such notice~~ NOTICE TO THE STATE UNDER THIS SECTION shall
 16 be filed in triplicate with the clerk of the court of claims.
 17 Filing of ~~such~~ THE notice ~~shall constitute~~ CONSTITUTES com-
 18 pliance with section 6431 of THE REVISED JUDICATURE ACT OF 1961,
 19 Act No. 236 of the Public Acts of 1961, being section 600.6431 of
 20 the MICHIGAN Compiled Laws, ~~of 1948,~~ requiring the filing of
 21 notice of intention to file a claim against the state. If
 22 required by the legislative body or chief administrative officer
 23 of the responsible governmental agency, the claimant shall appear
 24 to testify, if he OR SHE is physically able to do so. ~~and~~ THE
 25 CLAIMANT shall produce ~~his~~ witnesses before the legislative
 26 body, a committee ~~thereof~~ OF THAT BODY, ~~or~~ the chief
 27 administrative officer ~~,~~ or ~~his~~ THAT OFFICER'S deputy, or a

1 legal officer of the governmental agency as directed by the
2 legislative body or chief administrative officer of the responsi-
3 ble governmental agency, for examination under oath as to the
4 claim, the amount ~~thereof~~ OF THE CLAIM, and the extent of the
5 injury.

6 (3) ~~If the injured person is under the age of 18 years at~~
7 ~~the time the injury occurred, he shall serve the notice required~~
8 ~~by subsection (1) not more than 180 days from the time the injury~~
9 ~~occurred, which notice may be filed by a parent, attorney, next~~
10 ~~friend or legally appointed guardian.~~ If the injured person is
11 physically or mentally incapable of giving notice, ~~he~~ THE
12 PERSON shall serve the notice required by subsection (1) not more
13 than 180 days after the termination of the disability. In ~~all~~
14 A civil ~~actions~~ ACTION in which the physical or mental capabil-
15 ity of the person is in dispute, that issue shall be determined
16 by the trier of the facts. ~~The provisions of this~~ THIS subsec-
17 tion ~~shall apply~~ APPLIES to all charter provisions, statutes,
18 and ordinances ~~which~~ THAT require written ~~notices~~ NOTICE to
19 ~~counties~~ A COUNTY or municipal ~~corporations~~ CORPORATION.

20 (4) A NOTIFICATION TIME LIMIT PRESCRIBED BY THIS SECTION IS
21 AN ABSOLUTE BAR TO RECOVERY REGARDLESS OF WHETHER THE GOVERNMEN-
22 TAL AGENCY IS PREJUDICED BY THE FAILURE OF TIMELY NOTIFICATION.