

SENATE BILL No. 733

January 8, 2014, Introduced by Senators KOWALL and JONES 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 section 2 (MCL 691.1402), as amended by 2012 PA 50, and by adding section 2b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. (1) ~~Each~~ **A** governmental agency ~~having~~ **THAT HAS**
2 jurisdiction over a highway shall maintain the highway in

1 reasonable repair so that it is reasonably safe and convenient for
2 ~~public~~-**VEHICULAR** travel. A person who sustains bodily injury or
3 damage to his or her property by reason of failure of a
4 governmental agency to keep a highway under its jurisdiction in
5 reasonable repair and in a condition reasonably safe and fit for
6 travel may recover the damages suffered by him or her from the
7 governmental agency. The liability, procedure, and remedy as to
8 county roads under the jurisdiction of a county road commission
9 ~~shall be~~-**ARE** as provided in section 21 of chapter IV of 1909 PA
10 283, MCL 224.21. Except as provided in section 2a, the duty of a
11 governmental agency to repair and maintain ~~highways~~, **A HIGHWAY**, and
12 the liability for that duty, extends only to the improved portion
13 of the highway designed for vehicular travel and does not include
14 sidewalks, trailways, crosswalks, or any other installation outside
15 of the improved portion of the highway designed for vehicular
16 travel. **THE LIABILITY OF A GOVERNMENTAL AGENCY UNDER THIS SECTION**
17 **FOR INJURY TO OR THE DEATH OF A PEDESTRIAN OR OTHER PERSON WHO IS**
18 **NOT TRAVELING IN OR ON A MOTOR VEHICLE ON THE IMPROVED PORTION OF**
19 **THE HIGHWAY DESIGNED FOR VEHICULAR TRAVEL, OR FOR DAMAGE TO THE**
20 **PERSON'S PROPERTY, IS SUBJECT TO SECTION 2B.** A judgment against ~~the~~
21 **THIS** state based on a claim arising under this section from acts or
22 omissions of the state transportation department is payable only
23 from restricted funds appropriated to the state transportation
24 department or funds provided by its insurer.

25 (2) A municipal corporation has no duty to repair or maintain,
26 and is not liable for injuries or damages arising from, a portion
27 of a county or state highway.

1 (3) If the state transportation department contracts with
2 another governmental agency to perform work on a state trunk line
3 highway, an action brought under this section for tort liability
4 arising out of the performance of ~~that~~**THE** work shall be brought
5 only against the state transportation department under the same
6 circumstances and to the same extent as if the work had been
7 performed by employees of the state transportation department. The
8 state transportation department has the same defenses to the action
9 as it would have had if the work had been performed by its own
10 employees. If an action described in this subsection could have
11 been maintained against the state transportation department, it
12 shall not be maintained against the governmental agency that
13 performed the work for the state transportation department. The
14 governmental agency also has the same defenses that could have been
15 asserted by the state transportation department had the action been
16 brought against the state transportation department.

17 (4) The contractual undertaking of a governmental agency to
18 maintain a state trunk line highway confers contractual rights only
19 on the state transportation department and does not confer third
20 party beneficiary or other contractual rights in any other person
21 to recover damages to person or property from ~~that~~**THE** governmental
22 agency. This subsection does not relieve the state transportation
23 department of liability it may have, under this section, regarding
24 ~~that~~**THE** highway.

25 (5) The duty imposed by this section on a governmental agency
26 is limited by sections 81131 and 82124 of the natural resources and
27 environmental protection act, 1994 PA 451, MCL 324.81131 and

1 324.82124.

2 SEC. 2B. (1) A GOVERNMENTAL AGENCY IS NOT LIABLE UNDER SECTION
3 2 FOR INJURY TO OR THE DEATH OF A PEDESTRIAN OR OTHER PERSON WHO
4 WAS NOT TRAVELING IN OR ON A MOTOR VEHICLE ON THE IMPROVED PORTION
5 OF THE HIGHWAY DESIGNED FOR VEHICULAR TRAVEL, OR FOR DAMAGE TO THE
6 PERSON'S PROPERTY, UNLESS THE PLAINTIFF PROVES THAT AT LEAST 30
7 DAYS BEFORE THE OCCURRENCE OF THE INJURY, DEATH, OR DAMAGE, THE
8 GOVERNMENTAL AGENCY KNEW OR, IN THE EXERCISE OF REASONABLE
9 DILIGENCE, SHOULD HAVE KNOWN OF THE EXISTENCE OF THE DEFECT IN THE
10 HIGHWAY.

11 (2) IN A CIVIL ACTION AGAINST A GOVERNMENTAL AGENCY ALLEGING
12 LIABILITY UNDER SECTION 2 FOR INJURY, DEATH, OR DAMAGE DESCRIBED IN
13 SUBSECTION (1), THE GOVERNMENTAL AGENCY IS PRESUMED TO HAVE
14 MAINTAINED THE HIGHWAY IN REASONABLE REPAIR. THIS PRESUMPTION MAY
15 ONLY BE REBUTTED BY EVIDENCE OF FACTS SHOWING THAT A PROXIMATE
16 CAUSE OF THE INJURY, DEATH, OR DAMAGE WAS 1 OR BOTH OF THE
17 FOLLOWING:

18 (A) A VERTICAL DISCONTINUITY DEFECT OF 2 INCHES OR MORE IN THE
19 HIGHWAY.

20 (B) A DANGEROUS CONDITION IN THE HIGHWAY ITSELF OF A
21 PARTICULAR CHARACTER OTHER THAN SOLELY A VERTICAL DISCONTINUITY.

22 (3) WHETHER A PRESUMPTION UNDER SUBSECTION (2) HAS BEEN
23 REBUTTED IS A QUESTION OF LAW FOR THE COURT.