

SENATE BILL No. 336

April 30, 2013, Introduced by Senator SCHUITMAKER 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 19 (MCL 691.1419), as added by 2001 PA 222.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 19. (1) Except as provided in subsections (3) and (7), a
2 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 designated ~~in~~**UNDER** subsection (2)(b). To
8 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 property
13 notifies a contacting agency orally or in writing of an event
14 before providing a notice of a claim that complies with subsection
15 (1), the contacting agency shall provide the person with all of the
16 following information in writing:

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

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

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

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

6 (a) The claimant notified the contacting agency under
7 subsection (2) during the period for giving notice under subsection
8 (1).

9 (b) The claimant's failure to comply with the notice
10 requirements of subsection (1) resulted from the contacting
11 agency's failure to comply with subsection (2).

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

26 (5) If a governmental agency receives a notice from a claimant
27 or a different or additional governmental agency that complies with

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

9 (6) If a governmental agency notified of a claim under
10 subsection (1) and a claimant do not reach an agreement on the
11 amount of compensation for the property damage or physical injury
12 within 45 days after the receipt of notice under this section, ~~the~~
13 ~~claimant may institute a civil action. A civil action shall not be~~
14 ~~commenced under section 17 until after that 45 days.~~**THE**
15 **GOVERNMENTAL AGENCY SHALL SCHEDULE A HEARING TO BE COMMENCED WITHIN**
16 **30 DAYS BEFORE A NEUTRAL HEARING OFFICER APPOINTED BY THE**
17 **GOVERNMENTAL AGENCY WHO IS LICENSED AS A PROFESSIONAL ENGINEER**
18 **UNDER ARTICLE 20 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL**
19 **339.2001 TO 339.2014. THE GOVERNMENTAL AGENCY SHALL GIVE THE**
20 **CLAIMANT WRITTEN NOTICE OF THE DATE, TIME, AND PLACE OF THE**
21 **HEARING. THE CLAIMANT MAY BE REPRESENTED BY COUNSEL AT THE HEARING.**
22 **THE CLAIMANT AND THE GOVERNMENTAL AGENCY MAY PRESENT EVIDENCE AT**
23 **THE HEARING CONCERNING THE CLAIM. THE HEARING OFFICER SHALL**
24 **DETERMINE WHETHER THE CLAIM MAY BE MAINTAINED UNDER SECTION 17 AND**
25 **THE AMOUNT OF PROPERTY DAMAGES AND ECONOMIC DAMAGES FOR PERSONAL**
26 **INJURY. THE HEARING OFFICER SHALL NOT CONSIDER CLAIMS FOR**
27 **NONECONOMIC DAMAGES. THE HEARING OFFICER SHALL PROVIDE THE PARTIES**

1 WITH WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. ANY PARTY MAY
2 APPEAL ON THE RECORD MADE BEFORE THE HEARING OFFICER TO THE CIRCUIT
3 COURT.

4 (7) EXCEPT FOR CLAIMS TO WHICH SUBSECTION (3) APPLIES AND
5 CLAIMS FOR NONECONOMIC DAMAGES, A CIVIL ACTION SHALL NOT BE
6 COMMENCED UNDER SECTION 17 AND THE PROCEDURES CONTAINED IN THIS
7 SECTION ARE THE SOLE AND EXCLUSIVE REMEDY FOR ALL CLAIMS UNDER
8 SECTION 17. This section does not apply to claims for noneconomic
9 damages made under section 17.

10 (8) THE PROCEDURES ADDED TO THIS SECTION BY THE AMENDATORY ACT
11 THAT ADDED THIS SUBSECTION APPLY TO CLAIMS UNDER SECTION 17 FOR
12 WHICH THE NOTICE UNDER SUBSECTION (1) IS SENT AFTER JULY 1, 2013.