

# HOUSE BILL No. 5397

February 14, 2012, Introduced by Rep. Irwin and referred to the Committee on Judiciary.

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 1999 PA 205.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 2. (1) Except as otherwise provided in section 2a, each  
2           governmental agency having jurisdiction over a highway shall

1 maintain the highway in reasonable repair so that it is reasonably  
2 safe and convenient for public travel. A person who sustains bodily  
3 injury or 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 as provided in section 21 of chapter IV of 1909 PA 283,  
10 MCL 224.21. The duty of the state and the county road commissions  
11 to repair and maintain highways, and the liability for that duty,  
12 extends only to the improved portion of the highway designed for  
13 vehicular travel and does not include sidewalks, trailways,  
14 crosswalks, or any other installation outside of the improved  
15 portion of the highway designed for vehicular travel. **THE DUTY TO**  
16 **REPAIR AND MAINTAIN THE IMPROVED PORTION OF THE HIGHWAY DESIGNED**  
17 **FOR VEHICULAR TRAVEL IS NOT LIMITED TO THE PHYSICAL ROADBED. THE**  
18 **DUTY INCLUDES, BUT IS NOT LIMITED TO, AN OBLIGATION TO PROVIDE AND**  
19 **MAINTAIN APPROPRIATE ROAD SIGNAGE, MARKINGS, AND TRAFFIC CONTROL**  
20 **DEVICES AND TO PROPERLY DESIGN, CONSTRUCT, AND MAINTAIN THE**  
21 **ROADWAY.** A judgment against the state based on a claim arising  
22 under this section from acts or omissions of the state  
23 transportation department is payable only from restricted funds  
24 appropriated to the state transportation department or funds  
25 provided by its insurer.

26 (2) If the state transportation department contracts with  
27 another governmental agency to perform work on a state trunk line

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

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

23 (4) The duty imposed by this section on a governmental agency  
24 is limited by sections 81131 and 82124 of the natural resources and  
25 environmental protection act, 1994 PA 451, MCL 324.81131 and  
26 324.82124.