

SENATE BILL No. 201

February 24, 2011, Introduced by Senator SCHUITMAKER 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 sections 1, 2, and 2a (MCL 691.1401, 691.1402, and 691.1402a), section 1 as amended by 2001 PA 131 and section 2 as amended and section 2a as added by 1999 PA 205, and by adding section 2b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (A) "GOVERNMENTAL AGENCY" MEANS THIS STATE OR A POLITICAL
3 SUBDIVISION.

4 (B) "GOVERNMENTAL FUNCTION" MEANS AN ACTIVITY THAT IS
5 EXPRESSLY OR IMPLIEDLY MANDATED OR AUTHORIZED BY CONSTITUTION,
6 STATUTE, LOCAL CHARTER OR ORDINANCE, OR OTHER LAW. GOVERNMENTAL
7 FUNCTION INCLUDES AN ACTIVITY PERFORMED ON PUBLIC OR PRIVATE
8 PROPERTY BY A SWORN LAW ENFORCEMENT OFFICER WITHIN THE SCOPE OF THE
9 LAW ENFORCEMENT OFFICER'S AUTHORITY, AS DIRECTED OR ASSIGNED BY HIS
10 OR HER PUBLIC EMPLOYER FOR THE PURPOSE OF PUBLIC SAFETY.

11 (C) "HIGHWAY" MEANS A PUBLIC HIGHWAY, ROAD, OR STREET THAT IS
12 OPEN FOR PUBLIC TRAVEL. HIGHWAY INCLUDES A BRIDGE, SIDEWALK,
13 TRAILWAY, CROSSWALK, OR CULVERT ON THE HIGHWAY. HIGHWAY DOES NOT
14 INCLUDE AN ALLEY, TREE, OR UTILITY POLE.

15 (D) ~~(a)~~—"Municipal corporation" means a city, village, or
16 township or a combination of 2 or more of these when acting
17 jointly.

18 (E) ~~(b)~~—"Political subdivision" means a municipal corporation,
19 county, county road commission, school district, community college
20 district, port district, metropolitan district, or transportation
21 authority or a combination of 2 or more of these when acting
22 jointly; a district or authority authorized by law or formed by 1
23 or more political subdivisions; or an agency, department, court,
24 board, or council of a political subdivision.

25 (F) "SIDEWALK" INCLUDES A PUBLIC SIDEWALK, TRAILWAY,
26 CROSSWALK, OR OTHER PUBLIC INSTALLATION SITUATED OUTSIDE OF AND
27 ADJACENT TO THE IMPROVED PORTION OF A HIGHWAY DESIGNED FOR

1 **VEHICULAR TRAVEL.**

2 (G) ~~(e)~~ "State" means ~~the~~ **THIS** state of ~~Michigan~~ and its
3 agencies, departments, commissions, courts, boards, councils, and
4 statutorily created task forces. ~~and~~ **STATE** includes ~~every~~ **A** public
5 university ~~and~~ **OR** college of ~~the~~ **THIS** state, whether established as
6 a constitutional corporation or otherwise.

7 ~~—— (d) "Governmental agency" means the state or a political~~
8 ~~subdivision.~~

9 ~~—— (e) "Highway" means a public highway, road, or street that is~~
10 ~~open for public travel and includes bridges, sidewalks, trailways,~~
11 ~~crosswalks, and culverts on the highway. The term highway does not~~
12 ~~include alleys, trees, and utility poles.~~

13 ~~—— (f) "Governmental function" is an activity that is expressly~~
14 ~~or impliedly mandated or authorized by constitution, statute, local~~
15 ~~charter or ordinance, or other law. Governmental function includes~~
16 ~~an activity, as directed or assigned by his or her public employer~~
17 ~~for the purpose of public safety, performed on public or private~~
18 ~~property by a sworn law enforcement officer within the scope of the~~
19 ~~law enforcement officer's authority.~~

20 (H) ~~(g)~~ "Township" includes charter township.

21 (I) ~~(h)~~ "Volunteer" means an individual who is specifically
22 designated as a volunteer and who is acting solely on behalf of a
23 governmental agency.

24 Sec. 2. (1) Except as otherwise provided in section 2a, each
25 governmental agency having jurisdiction over a highway shall
26 maintain the highway in reasonable repair so that it is reasonably
27 safe and convenient for public travel. A person who sustains bodily

1 injury or damage to his or her property by reason of failure of a
2 governmental agency to keep a highway under its jurisdiction in
3 reasonable repair and in a condition reasonably safe and fit for
4 travel may recover the damages suffered by him or her from the
5 governmental agency. The liability, procedure, and remedy as to
6 county roads under the jurisdiction of a county road commission
7 shall be as provided in section 21 of chapter IV of 1909 PA 283,
8 MCL 224.21. The duty of the state and the county road commissions
9 to repair and maintain highways, and the liability for that duty,
10 extends only to the improved portion of the highway designed for
11 vehicular travel. ~~and does not include sidewalks, trailways,~~
12 ~~crosswalks, or any other installation outside of the improved~~
13 ~~portion of the highway designed for vehicular travel.~~ A judgment
14 against the state based on a claim arising under this section from
15 acts or omissions of the state transportation department is payable
16 only from restricted funds appropriated to the state transportation
17 department or funds provided by its insurer.

18 (2) If the state transportation department contracts with
19 another governmental agency to perform work on a state trunk line
20 highway, an action brought under this section for tort liability
21 arising out of the performance of that work shall be brought only
22 against the state transportation department under the same
23 circumstances and to the same extent as if the work had been
24 performed by employees of the state transportation department. The
25 state transportation department has the same defenses to the action
26 as it would have had if the work had been performed by its own
27 employees. If an action described in this subsection could have

1 been maintained against the state transportation department, it
 2 shall not be maintained against the governmental agency that
 3 performed the work for the state transportation department. The
 4 governmental agency also has the same defenses that could have been
 5 asserted by the state transportation department had the action been
 6 brought against the state transportation department.

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

15 (4) The duty imposed by this section on a governmental agency
 16 is limited by sections 81131 and 82124 of the natural resources and
 17 environmental protection act, 1994 PA 451, MCL 324.81131 and
 18 324.82124.

19 Sec. 2a. (1) ~~Except as otherwise provided by this section, a~~
 20 ~~municipal corporation has no duty to repair or maintain, and is not~~
 21 ~~liable for injuries arising from, a portion of a county OR STATE~~
 22 ~~highway, outside of the improved portion of the highway designed~~
 23 ~~for vehicular travel, including a sidewalk, trailway, crosswalk, or~~
 24 ~~other installation. This subsection does not prevent or limit a~~
 25 ~~municipal corporation's liability if both of the following are~~
 26 ~~true.~~ **EXCEPT THAT A MUNICIPAL CORPORATION SHALL MAINTAIN AN EXISTING**
 27 **SIDEWALK ADJACENT TO A MUNICIPAL, COUNTY, OR STATE HIGHWAY PURSUANT**

1 TO SECTION 2(1).

2 ~~—— (a) At least 30 days before the occurrence of the relevant~~
3 ~~injury, death, or damage, the municipal corporation knew or, in the~~
4 ~~exercise of reasonable diligence, should have known of the~~
5 ~~existence of a defect in a sidewalk, trailway, crosswalk, or other~~
6 ~~installation outside of the improved portion of the highway~~
7 ~~designed for vehicular travel.~~

8 ~~—— (b) The defect described in subdivision (a) is a proximate~~
9 ~~cause of the injury, death, or damage.~~

10 ~~—— (2) A discontinuity defect of less than 2 inches creates a~~
11 ~~rebuttable inference that the municipal corporation maintained the~~
12 ~~sidewalk, trailway, crosswalk, or other installation outside of the~~
13 ~~improved portion of the highway designed for vehicular travel in~~
14 ~~reasonable repair.~~

15 (2) ~~(3)~~ A municipal corporation's liability **ARISING FROM A**
16 **DUTY TO MAINTAIN A SIDEWALK** under subsection (1) is limited by
17 **SECTION 2B AND BY** section 81131 of the natural resources and
18 environmental protection act, 1994 PA 451, MCL 324.81131.

19 **SEC. 2B. (1) A DISCONTINUITY DEFECT OF LESS THAN 2 INCHES,**
20 **MEASURED VERTICALLY, IN A SIDEWALK CREATES A REBUTTABLE PRESUMPTION**
21 **THAT A MUNICIPAL CORPORATION WITH A DUTY TO MAINTAIN THE SIDEWALK**
22 **MAINTAINED THE SIDEWALK IN REASONABLE REPAIR.**

23 (2) A PRESUMPTION UNDER SUBSECTION (1) MAY BE REBUTTED BY
24 EVIDENCE OF SPECIFIC FACTS SHOWING THAT THERE WAS A DANGEROUS
25 CONDITION IN THE SIDEWALK ITSELF OF A PARTICULAR CHARACTER THAT WAS
26 A PROXIMATE CAUSE OF THE INJURY.