

# SENATE BILL NO. 43

January 26, 2021, Introduced by Senator VICTORY and referred to the Committee on Transportation and Infrastructure.

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.

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

22           (2) A municipal corporation has no duty to repair or maintain,  
 23 and is not liable for injuries or damages arising from, a portion  
 24 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 work ~~shall~~**must** 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~~**may** 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 governmental  
22 agency. This subsection does not relieve the state transportation  
23 department of liability it may have, under this section, regarding  
24 that 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  
28 324.82124.

29           Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect  
3 unless Senate Bill No. 39 of the 101st Legislature is enacted into  
4 law.