

# HOUSE BILL No. 6358

September 24, 2002, Introduced by Reps. Sheltroun, Minore and Neumann and referred to the Committee on Civil Law and the 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 2 and 2a (MCL 691.1402 and 691.1402a), section 2 as amended and section 2a as added by 1999 PA 205.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 2. (1) ~~Except as otherwise provided in~~ SUBJECT TO  
2 section 2a, each governmental agency having jurisdiction over a  
3 highway ~~shall maintain the highway in reasonable repair so that~~

1 ~~it is reasonably safe and convenient for public travel.~~ HAS A  
2 DUTY TO DO ALL OF THE FOLLOWING SO THAT THE HIGHWAY IS REASONABLY  
3 SAFE, FIT, AND CONVENIENT FOR PUBLIC TRAVEL:

4 (A) IF THE GOVERNMENTAL AGENCY UNDERTAKES TO DESIGN OR CON-  
5 STRUCT THE HIGHWAY, USE APPROPRIATE STANDARDS AND CARE.

6 (B) MAINTAIN THE HIGHWAY IN REASONABLE REPAIR.

7 (C) PROVIDE FOR, INSTALL, AND MAINTAIN TRAFFIC CONTROL  
8 DEVICES.

9 (2) A person who sustains bodily injury or damage to his or  
10 her property ~~by reason of~~ BECAUSE OF THE failure of a govern-  
11 mental agency to ~~keep a highway under its jurisdiction in rea-~~  
12 ~~sonable repair and in a condition reasonably safe and fit for~~  
13 ~~travel~~ PERFORM A DUTY UNDER SUBSECTION (1) may recover the dam-  
14 ages suffered by him or her from the governmental agency. The  
15 liability, procedure, and remedy as to county roads under the  
16 jurisdiction of a county road commission shall be as provided in  
17 section 21 of chapter IV of 1909 PA 283, MCL 224.21. ~~The~~  
18 EXCEPT FOR THE DUTY TO REPAIR AND MAINTAIN TRAFFIC CONTROL  
19 DEVICES, THE duty of the state and the county road commissions to  
20 repair, ~~and maintain highways~~ MAINTAIN, DESIGN, AND CONSTRUCT  
21 HIGHWAYS UNDER SUBSECTION (1), and the liability for that duty,  
22 extends only to the improved portion of the highway designed for  
23 vehicular travel, INCLUDING, BUT NOT LIMITED TO, A SHOULDER AREA  
24 ADJACENT TO A TRAVEL LANE, and does not include sidewalks, trail-  
25 ways, crosswalks, or any other installation outside of the  
26 improved portion of the highway designed for vehicular travel. A  
27 judgment against the state based on a claim arising under this

1 section from acts or omissions of the state transportation  
2 department is payable only from restricted funds appropriated to  
3 the state transportation department or funds provided by its  
4 insurer.

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

22       (4) ~~-(3)-~~ The contractual undertaking of a governmental  
23 agency to maintain a state trunk line highway confers contractual  
24 rights only on the state transportation department and does not  
25 confer third party beneficiary or other contractual rights in any  
26 other person to recover damages to person or property from that  
27 governmental agency. This subsection does not relieve the state

1 transportation department of liability it may have, under this  
2 section, regarding that highway.

3 (5) ~~(4)~~ The duty imposed by this section on a governmental  
4 agency is limited by sections 81131 and 82124 of the natural  
5 resources and environmental protection act, 1994 PA 451,  
6 MCL 324.81131 and 324.82124.

7 Sec. 2a. (1) Except as otherwise provided by this section,  
8 a municipal corporation has no duty to repair or maintain, and is  
9 not liable for injuries arising from, a portion of a county high-  
10 way outside of the improved portion of the highway designed for  
11 vehicular travel AS DESCRIBED IN SECTION 2(2), including a side-  
12 walk, trailway, crosswalk, or other installation. This subsec-  
13 tion does not prevent or limit a municipal corporation's liabil-  
14 ity if both of the following are true:

15 (a) At least 30 days before the occurrence of the relevant  
16 injury, death, or damage, the municipal corporation knew or, in  
17 the exercise of reasonable diligence, should have known of the  
18 existence of a defect in a sidewalk, trailway, crosswalk, or  
19 other installation outside of the improved portion of the highway  
20 designed for vehicular travel.

21 (b) The defect described in subdivision (a) is a proximate  
22 cause of the injury, death, or damage.

23 (2) A discontinuity defect of less than 2 inches creates a  
24 rebuttable inference that the municipal corporation maintained  
25 the sidewalk, trailway, crosswalk, or other installation outside  
26 of the improved portion of the highway designed for vehicular  
27 travel in reasonable repair.

1           (3) A municipal corporation's liability under subsection (1)  
2 is limited by section 81131 of the natural resources and environ-  
3 mental protection act, 1994 PA 451, MCL 324.81131.