

GOVERNMENTAL LIABILITY FOR NEGLIGENCE

Act 170 of 1964

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.

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970 ;-- Am. 1978, Act 141, Imd. Eff. May 11, 1978 ;-- Am. 1986, Act 175, Imd. Eff. July 7, 1986 ;-- Am. 2002, Act 400, Imd. Eff. May 30, 2002

Compiler's Notes: In *Hyde v. University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that "1986 PA 175 was enacted, effective July 1, 1986." Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Popular Name: Governmental Immunity Act

The People of the State of Michigan enact:

691.1401 Definitions.

Sec. 1.

As used in this act:

- (a) "Governmental agency" means this state or a political subdivision.
- (b) "Governmental function" means an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Governmental function includes an activity performed on public or private property by a sworn law enforcement officer within the scope of the law enforcement officer's authority, as directed or assigned by his or her public employer for the purpose of public safety.
- (c) "Highway" means a public highway, road, or street that is open for public travel. Highway includes a bridge, sidewalk, railway, crosswalk, or culvert on the highway. Highway does not include an alley, tree, or utility pole.
- (d) "Municipal corporation" means a city, village, or township or a combination of 2 or more of these when acting jointly.
- (e) "Political subdivision" means a municipal corporation, county, county road commission, school district, community college district, port district, metropolitan district, or transportation authority or a combination of 2 or more of these when acting jointly; a district or authority authorized by law or formed by 1 or more political subdivisions; or an agency, department, court, board, or council of a political subdivision.
- (f) "Sidewalk", except as used in subdivision (c), means a paved public sidewalk intended for pedestrian use situated outside of and adjacent to the improved portion of a highway designed for vehicular travel.
- (g) "State" means this state and its agencies, departments, commissions, courts, boards, councils, and statutorily created task forces. State includes a public university or college of this state, whether established as a constitutional corporation or otherwise.
- (h) "Township" means a general law township or a charter township.
- (i) "Volunteer" means an individual who is specifically designated as a volunteer and who is acting solely on behalf of a governmental agency.

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 1986, Act 175, Imd. Eff. July 7, 1986 ;-- Am. 1999, Act 205, Imd. Eff. Dec. 21, 1999 ;-- Am. 2001, Act 131, Imd. Eff. Oct. 15, 2001 ;-- Am. 2012, Act 50, Imd. Eff. Mar. 13, 2012

Compiler's Notes: Section 3 of Act 175 of 1986 provides:“(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.”“(2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986.”In *Hyde v. University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that “1986 PA 175 was enacted, effective July 1, 1986.” Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986. Enacting section 1 of Act 205 of 1999 provides:“Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act.”Enacting section 1 of Act 131 of 2001 provides:“Enacting section 1. The provisions of this amendatory

act do not limit or reduce the scope of a governmental function as defined by statute or common law.”

Popular Name: Governmental Immunity Act

691.1402 Repairing and maintaining highways; damages for bodily injury or damage to property; liability, procedure, and remedy as to county roads; judgment against state; payment of judgment; liability of municipal corporation; effect of contractual undertaking to perform work on state trunk line highway; limitations on duties of governmental agency; limitation.

Sec. 2.

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

(2) A municipal corporation has no duty to repair or maintain, and is not liable for injuries or damages arising from, a portion of a county or state highway.

(3) If the state transportation department contracts with another governmental agency to perform work on a state trunk line highway, an action brought under this section for tort liability arising out of the performance of that work shall be brought only against the state transportation department under the same circumstances and to the same extent as if the work had been performed by employees of the state transportation department. The state transportation department has the same defenses to the action as it would have had if the work had been performed by its own employees. If an action described in this subsection could have been maintained against the state transportation department, it shall not be maintained against the governmental agency that performed the work for the state transportation department. The governmental agency also has the same defenses that could have been asserted by the state transportation department had the action been brought against the state transportation department.

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

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

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 1990, Act 278, Imd. Eff. Dec. 11, 1990 ;-- Am. 1996, Act 150, Imd. Eff. Mar. 25, 1996 ;-- Am. 1999, Act 205, Imd. Eff. Dec. 21, 1999 ;-- Am. 2012, Act 50, Imd. Eff. Mar. 13, 2012

Compiler's Notes: Enacting section 1 of Act 205 of 1999 provides:“Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act.”

Popular Name: Governmental Immunity Act

691.1402a Municipal corporation; maintenance of sidewalk; liability; presumption; additional defense; limitation.

Sec. 2a.

(1) A municipal corporation in which a sidewalk is installed adjacent to a municipal, county, or state highway

shall maintain the sidewalk in reasonable repair.

(2) A municipal corporation is not liable for breach of a duty to maintain a sidewalk unless the plaintiff proves that at least 30 days before the occurrence of the relevant injury, death, or damage, the municipal corporation knew or, in the exercise of reasonable diligence, should have known of the existence of the defect in the sidewalk.

(3) In a civil action, a municipal corporation that has a duty to maintain a sidewalk under subsection (1) is presumed to have maintained the sidewalk in reasonable repair. This presumption may only be rebutted by evidence of facts showing that a proximate cause of the injury was 1 or both of the following:

(a) A vertical discontinuity defect of 2 inches or more in the sidewalk.

(b) A dangerous condition in the sidewalk itself of a particular character other than solely a vertical discontinuity.

(4) Whether a presumption under subsection (3) has been rebutted is a question of law for the court.

(5) In a civil action, a municipal corporation that has a duty to maintain a sidewalk under subsection (1) may assert, in addition to any other defense available to it, any defense available under the common law with respect to a premises liability claim, including, but not limited to, a defense that the condition was open and obvious.

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

History: Add. 1999, Act 205, Imd. Eff. Dec. 21, 1999 ;-- Am. 2012, Act 50, Imd. Eff. Mar. 13, 2012 ;-- Am. 2016, Act 419, Imd. Eff. Jan. 4, 2017

Compiler's Notes: Enacting section 1 of Act 205 of 1999 provides: "Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act."

Popular Name: Governmental Immunity Act

Popular Name: 2-Inch Rule

691.1403 Defective highways; knowledge of defect, repair.

Sec. 3.

No governmental agency is liable for injuries or damages caused by defective highways unless the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place. Knowledge of the defect and time to repair the same shall be conclusively presumed when the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury took place.

History: 1964, Act 170, Eff. July 1, 1965

Popular Name: Governmental Immunity Act

691.1404 Notice of injury and defect in highway.

Sec. 4.

(1) As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

(2) The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. In case of the state, such notice shall be filed in triplicate with the clerk of the court of claims. Filing of such notice shall constitute compliance with section 6431 of Act No. 236 of the Public Acts of 1961, being section 600.6431 of the Compiled Laws of 1948, requiring the filing of notice of intention to file a claim against the state. If required by the legislative body or chief administrative officer of the responsible governmental agency, the claimant shall appear to testify, if he is physically able to do so, and shall produce his witnesses before the legislative body, a committee thereof, or the chief administrative officer, or his deputy, or a legal officer of the governmental agency as directed by the legislative body or chief administrative

officer of the responsible governmental agency, for examination under oath as to the claim, the amount thereof, and the extent of the injury.

(3) If the injured person is under the age of 18 years at the time the injury occurred, he shall serve the notice required by subsection (1) not more than 180 days from the time the injury occurred, which notice may be filed by a parent, attorney, next friend or legally appointed guardian. If the injured person is physically or mentally incapable of giving notice, he shall serve the notice required by subsection (1) not more than 180 days after the termination of the disability. In all civil actions in which the physical or mental capability of the person is in dispute, that issue shall be determined by the trier of the facts. The provisions of this subsection shall apply to all charter provisions, statutes and ordinances which require written notices to counties or municipal corporations.

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970 ;-- Am. 1972, Act 28, Imd. Eff. Feb. 19, 1972

Constitutionality: Notice requirement provision of section held to arbitrarily split all tortfeasors into two differently treated subclasses: private tortfeasors to whom no notice of claim is required, and governmental tortfeasors to whom notice is required. Such treatment held to violate equal protection guarantee of US Const, am XIV, § 1, and Const 1963, art I, § 2. *Reich v State Highway Department*, 386 Mich 617; 194 NW2d 700 (1972). The 120-day notice provision contained in this section does not violate the Michigan Constitution if it is posited as having the legitimate purpose of avoiding actual prejudice to the state. *Hobbs v Department of State Highways*, 398 Mich 90; 247 NW2d 754 (1975); *Kerkstra v Department of State Highways*, 398 Mich 103; 247 NW2d 759 (1975).

Popular Name: Governmental Immunity Act

691.1405 Government owned vehicles; liability for negligent operation.

Sec. 5.

Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948.

History: 1964, Act 170, Eff. July 1, 1965

Popular Name: Governmental Immunity Act

691.1406 Public buildings; dangerous condition; liability; notice, contents, service.

Sec. 6.

Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition. Knowledge of the dangerous and defective condition of the public building and time to repair the same shall be conclusively presumed when such defect existed so as to be readily apparent to an ordinary observant person for a period of 90 days or longer before the injury took place. As a condition to any recovery for injuries sustained by reason of any dangerous or defective public building, the injured person, within 120 days from the time the injury occurred, shall serve a notice on the responsible governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the responsible governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. If required by the legislative body or chief administrative officer of the responsible governmental agency, the claimant shall appear to testify, when physically able to do so, and shall produce his witnesses before the legislative body, a committee thereof, the chief administrative officer, his deputy, or a legal officer of the governmental agency, as directed by the legislative body or by the chief administrative officer of the responsible governmental agency, for examination under oath as to the claim, the amount thereof, and the extent of the injury. Notice to the state of Michigan shall be given as provided in

section 4. No action shall be brought under the provisions of this section against any governmental agency, other than a municipal corporation, except for injury or loss suffered after July 1, 1965.

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970

Popular Name: Governmental Immunity Act

691.1406a Subrogation.

Sec. 6a.

A governmental agency against whom judgment has been entered pursuant to this act may seek subrogation where it is available by law or by contract and recover contribution from each co-defendant and joint and several tortfeasor where appropriate pursuant to sections 2925a to 2925d of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.2925a to 600.2925d of the Michigan Compiled Laws.

History: Add. 1986, Act 175, Imd. Eff. July 7, 1986

Constitutionality: In *Hyde v University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that "1986 PA 175 was enacted, effective July 1, 1986." Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Compiler's Notes: Section 3 of Act 175 of 1986 provides: "(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986." (2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986."

Popular Name: Governmental Immunity Act

691.1407 Immunity from tort liability; intentional torts; immunity of judge, legislator, official, and guardian ad litem; immunity of governmental agency under MISS DIG underground facility damage prevention and safety act; definitions.

Sec. 7.

(1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

(3) Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986.

(4) This act does not grant immunity to a governmental agency or an employee or agent of a governmental agency with respect to providing medical care or treatment to a patient, except medical care or treatment provided to a patient in a hospital owned or operated by the department of community health or a hospital owned or operated by the department of corrections and except care or treatment provided by an uncompensated search and rescue operation medical assistant or tactical operation medical assistant.

(5) A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

(6) A guardian ad litem is immune from civil liability for an injury to a person or damage to property if he or she

is acting within the scope of his or her authority as guardian ad litem. This subsection applies to actions filed before, on, or after May 1, 1996.

(7) The immunity provided by this act does not apply to liability of a governmental agency under the MISS DIG underground facility damage prevention and safety act.

(8) As used in this section:

(a) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(b) "Search and rescue operation" means an action by a governmental agency to search for, rescue, or recover victims of a natural or manmade disaster, accident, or emergency on land or water.

(c) "Search and rescue operation medical assistant" means an individual licensed to practice 1 or more of the occupations listed in subdivision (e), acting within the scope of the license, and assisting a governmental agency in a search and rescue operation.

(d) "Tactical operation" means a coordinated, planned action by a special operations, weapons, or response team of a law enforcement agency that is 1 of the following:

(i) Taken to deal with imminent violence, a riot, an act of terrorism, or a similar civic emergency.

(ii) The entry into a building, area, watercraft, aircraft, land vehicle, or body of water to seize evidence, or to arrest an individual for a felony, under the authority of a warrant issued by a court.

(iii) Training for the team.

(e) "Tactical operation medical assistant" means an individual licensed to practice 1 or more of the following, acting within the scope of the license, and assisting law enforcement officers while they are engaged in a tactical operation:

(i) Medicine, osteopathic medicine and surgery, or as a registered professional nurse, under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) As an emergency medical technician, emergency medical technician specialist, or paramedic under part 209 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979.

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970 ;-- Am. 1986, Act 175, Imd. Eff. July 7, 1986 ;-- Am. 1996, Act 143, Eff. May 1, 1996 ;-- Am. 1999, Act 241, Imd. Eff. Dec. 28, 1999 ;-- Am. 2000, Act 318, Imd. Eff. Oct. 24, 2000 ;-- Am. 2004, Act 428, Imd. Eff. Dec. 17, 2004 ;-- Am. 2005, Act 318, Imd. Eff. Dec. 27, 2005 ;-- Am. 2013, Act 173, Eff. Apr. 1, 2014

Compiler's Notes: Section 3 of Act 175 of 1986 provides:“(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.”“(2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986.”Enacting section 1 of Act 318 of 2000 provides:“Enacting section 1. This amendatory act applies only to a cause of action arising on or after the effective date of this amendatory act.”

Popular Name: Governmental Immunity Act

691.1407a Repealed. 1999, Act 241, Eff. Jan. 1, 2003.

Compiler's Notes: The repealed section pertained to immunity of political subdivision and governmental agency from liability resulting from computer date failure.

Popular Name: Governmental Immunity Act

691.1407b Repealed. 1999, Act 242, Eff. Jan. 1, 2003.

Compiler's Notes: The repealed section pertained to immunity of municipal corporation from liability resulting from computer date failure.

Popular Name: Governmental Immunity Act

691.1407c Donated fire control or rescue equipment; liability; testing, repair, or maintenance; rights of employee or volunteer under MCL 418.101 to 418.941; "organized fire department" defined.

Sec. 7c.

(1) A municipal corporation, organized fire department, or agent of a municipal corporation or organized fire department that donates fire control or rescue equipment to another municipal corporation or organized fire department is not liable for damages for personal injury, death, or property damage proximately caused after the donation by a defect in the equipment.

(2) Before using equipment donated under subsection (1), a municipal corporation or organized fire department that receives the donated equipment shall have the equipment tested, repaired, or maintained if required by state or federal law, rule, or regulation. The municipal corporation or organized fire department shall not use the donated equipment unless the use is consistent with state and federal laws, rules, and regulations. Subject to subsection (3), a municipal corporation or organized fire department that complies with this subsection is not liable for damages for personal injury, death, or property damage proximately caused by a defect in the donated equipment.

(3) The immunity from liability provided by subsection (2) does not affect the rights of an employee or volunteer of the municipal corporation or organized fire department that receives the donated equipment to benefits under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, or any similar law.

(4) As used in this section, "organized fire department" means that term as defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.

History: Add. 2006, Act 244, Imd. Eff. June 30, 2006

Popular Name: Governmental Immunity Act

691.1408 Claim or civil action against officer or employee of governmental agency for injuries caused by negligence; services of attorney; payment of claim; judgment for damages; indemnification; payment or settlement of judgment; criminal action against officer or employee of governmental agency; services of attorney; reimbursement for legal expenses; liability on governmental agency not imposed.

Sec. 8.

(1) If a claim is made or a civil action is commenced against an officer, employee, or volunteer of a governmental agency for injuries to persons or property caused by negligence of the officer, employee, or volunteer while in the course of employment with or acting on behalf of the governmental agency and while acting within the scope of his or her authority, the governmental agency may pay for, engage, or furnish the services of an attorney to advise the officer, employee, or volunteer as to the claim and to appear for and represent the officer, employee, or volunteer in the action. The governmental agency may compromise, settle, and pay the claim before or after the commencement of a civil action. If a judgment for damages is awarded against an officer, employee, or volunteer of a governmental agency as a result of a civil action for personal injuries or property damage caused by the officer, employee, or volunteer while in the course of employment and while acting within the scope of his or her authority, the governmental agency may indemnify the officer, employee, or volunteer or pay, settle, or compromise the judgment.

(2) If a criminal action is commenced against an officer or employee of a governmental agency based on the conduct of the officer or employee in the course of employment, if the employee or officer had a reasonable basis for believing that he or she was acting within the scope of his or her authority at the time of the alleged conduct, the governmental agency may pay for, engage, or furnish the services of an attorney to advise the officer or employee as to the action, and to appear for and represent the officer or employee in the action. An officer or employee who has incurred legal expenses after December 31, 1975 for conduct described in this subsection may obtain reimbursement for those expenses under this subsection.

(3) A governmental agency may pay for, engage, or furnish the services of an attorney to advise an officer, employee, or volunteer of the governmental agency, and to appear for and represent the officer, employee, or volunteer, in connection with civil or criminal litigation or an investigation or proceeding if the litigation, investigation, or proceeding involves the officer, employee, or volunteer as a result of his or her conduct in the course of employment with or actions taken on behalf of the governmental agency, subject to the following limitations:

(a) If a claim is made or a civil action is commenced against the officer, employee, or volunteer, subsection (1) of this section governs the governmental agency's authority to pay for, engage, or furnish the services of an attorney to advise the officer, employee, or volunteer as to the claim and to appear for and represent the officer, employee, or volunteer in the action.

(b) If a criminal action is commenced against the officer, employee, or volunteer, subsection (2) of this section governs the governmental agency's authority to pay for, engage, or furnish the services of an attorney to advise the

officer, employee, or volunteer as to the action, and to appear for and represent the officer, employee, or volunteer in the action.

(4) This section does not impose liability on a governmental agency.

(5) This section is not intended to affect existing constitutional, statutory, and common law powers and duties of the Attorney General.

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 1978, Act 141, Imd. Eff. May 11, 1978 ;-- Am. 2002, Act 400, Imd. Eff. May 30, 2002 ;-- Am. 2020, Act 357, Imd. Eff. Dec. 30, 2020

Compiler's Notes: Enacting section 1 of Act 357 of 2020 provides: "Enacting section 1. This amendatory act applies retroactively."

Popular Name: Governmental Immunity Act

691.1409 Liability insurance; waiver of defense.

Sec. 9.

(1) A governmental agency may purchase liability insurance to indemnify and protect the governmental agency against loss or to protect the governmental agency and an agent, officer, employee, or volunteer of the governmental agency against loss on account of an adverse judgment arising from a claim for personal injury or property damage caused by the governmental agency or its agent, officer, employee, or volunteer. A governmental agency may pay premiums for the insurance authorized by this section out of current funds.

(2) The existence of an insurance policy indemnifying a governmental agency against liability for damages is not a waiver of a defense otherwise available to the governmental agency in the defense of the claim.

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 2002, Act 400, Imd. Eff. May 30, 2002

Popular Name: Governmental Immunity Act

691.1410 Claims against state, political subdivision, or municipal corporation; procedure.

Sec. 10.

(1) Claims against the state authorized under this act shall be brought in the manner provided in sections 6401 to 6475 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.6401 to 600.6475 of the Michigan Compiled Laws, and against any political subdivision or municipal corporation by civil action in any court having jurisdiction.

(2) Except as otherwise provided in this act, any claim that is authorized under this act shall be subject to the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 1986, Act 175, Imd. Eff. July 7, 1986

Constitutionality: In *Hyde v University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that "1986 PA 175 was enacted, effective July 1, 1986." Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Popular Name: Governmental Immunity Act

691.1411 Claim against government agency; limitation of actions.

Sec. 11.

(1) Every claim against any governmental agency shall be subject to the general law respecting limitations of actions except as otherwise provided in this section.

- (2) The period of limitations for claims arising under section 2 of this act shall be 2 years.
- (3) The period of limitations for all claims against the state, except those arising under section 2 of this act, shall be governed by chapter 64 of Act No. 236 of the Public Acts of 1961.

History: 1964, Act 170, Eff. July 1, 1965

Constitutionality: This section does not deny the equal protection of the law. *Forest v Parmalee*, 402 Mich 348; 262 NW2d 653 (1978).

Popular Name: Governmental Immunity Act

691.1412 Claims under act; defenses available.

Sec. 12.

Claims under this act are subject to all of the defenses available to claims sounding in tort brought against private persons.

History: 1964, Act 170, Eff. July 1, 1965

Popular Name: Governmental Immunity Act

691.1413 Damage arising out of performance of proprietary function.

Sec. 13.

The immunity of the governmental agency shall not apply to actions to recover for bodily injury or property damage arising out of the performance of a proprietary function as defined in this section. Proprietary function shall mean any activity which is conducted primarily for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees. No action shall be brought against the governmental agency for injury or property damage arising out of the operation of proprietary function, except for injury or loss suffered on or after July 1, 1965.

History: 1964, Act 170, Eff. July 1, 1965 ;-- Am. 1986, Act 175, Imd. Eff. July 7, 1986

Constitutionality: Section 3 of Act 175 of 1986 provides:“(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.”“(2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986.”In *Hyde v University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that “1986 PA 175 was enacted, effective July 1, 1986.” Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Popular Name: Governmental Immunity Act

691.1414 Repeal.

Sec. 14.

Chapter 22 of Act No. 283 of the Public Acts of 1909, as amended, being sections 242.1 to 242.8 of the Compiled Laws of 1948; section 2904 of Act No. 236 of the Public Acts of 1961, being section 600.2904 of the Compiled Laws of 1948; Act No. 59 of the Public Acts of 1951, as amended, being sections 124.101 to 124.103 of the Compiled Laws of 1948, are repealed.

History: 1964, Act 170, Eff. July 1, 1965

Popular Name: Governmental Immunity Act

691.1415 Effective date of act.

Sec. 15.

This act shall take effect July 1, 1965.

History: 1964, Act 170, Eff. July 1, 1965

Popular Name: Governmental Immunity Act

691.1416 Definitions.

Sec. 16.

As used in this section and sections 17 to 19:

- (a) "Affected property" means real property affected by a sewage disposal system event.
- (b) "Appropriate governmental agency" means a governmental agency that, at the time of a sewage disposal system event, owned or operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage or physical injury.
- (c) "Claimant" means a property owner that believes that a sewage disposal system event caused damage to the owner's property, a physically injured individual who believes that a sewage disposal system event caused the physical injury, or a person making a claim on behalf of a property owner or physically injured individual. Claimant includes a person that is subrogated to a claim of a property owner or physically injured individual described in this subdivision.
- (d) "Contacting agency" means any of the following within a governmental agency:
 - (i) The clerk of the governmental agency.
 - (ii) If the governmental agency has no clerk, an individual who may lawfully be served with civil process directed against the governmental agency.
 - (iii) Any other individual, agency, authority, department, district, or office authorized by the governmental agency to receive notice under section 19, including, but not limited to, an agency, authority, department, district, or office responsible for the operation of the sewage disposal system, such as a sewer department, water department, or department of public works.
- (e) "Defect" means a construction, design, maintenance, operation, or repair defect.
- (f) "Noneconomic damages" includes, but is not limited to, pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, and other nonpecuniary damages.
- (g) "Person" means an individual, partnership, association, corporation, other legal entity, or a political subdivision.
- (h) "Serious impairment of body function" means that term as defined in section 3135 of the insurance code of 1956, 1956 PA 218, MCL 500.3135.
- (i) "Service lead" means an instrumentality that connects an affected property, including a structure, fixture, or improvement on the property, to the sewage disposal system and that is neither owned nor maintained by a governmental agency.
- (j) "Sewage disposal system" means all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, and includes a storm water drain system under the jurisdiction and control of a governmental agency.
- (k) "Sewage disposal system event" or "event" means the overflow or backup of a sewage disposal system onto real property. An overflow or backup is not a sewage disposal system event if any of the following was a substantial proximate cause of the overflow or backup:
 - (i) An obstruction in a service lead that was not caused by a governmental agency.
 - (ii) A connection to the sewage disposal system on the affected property, including, but not limited to, a sump system, building drain, surface drain, gutter, or downspout.
 - (iii) An act of war, whether the war is declared or undeclared, or an act of terrorism.
- (l) "Substantial proximate cause" means a proximate cause that was 50% or more of the cause of the event and the property damage or physical injury.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002
Popular Name: Governmental Immunity Act

691.1417 Damages or physical injuries caused by sewage disposal system event; compliance of claimant and governmental agency with relief provisions.

Sec. 17.

(1) To afford property owners, individuals, and governmental agencies greater efficiency, certainty, and consistency in the provision of relief for damages or physical injuries caused by a sewage disposal system event, a claimant and a governmental agency subject to a claim shall comply with this section and the procedures in sections 18 and 19.

(2) A governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency. Sections 16 to 19 abrogate common law exceptions, if any, to immunity for the overflow or backup of a sewage disposal system and provide the sole remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory.

(3) If a claimant, including a claimant seeking noneconomic damages, believes that an event caused property damage or physical injury, the claimant may seek compensation for the property damage or physical injury from a governmental agency if the claimant shows that all of the following existed at the time of the event:

(a) The governmental agency was an appropriate governmental agency.

(b) The sewage disposal system had a defect.

(c) The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.

(d) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.

(e) The defect was a substantial proximate cause of the event and the property damage or physical injury.

(4) In addition to the requirements of subsection (3), to obtain compensation for property damage or physical injury from a governmental agency, a claimant must show both of the following:

(a) If any of the damaged property is personal property, reasonable proof of ownership and the value of the damaged personal property. Reasonable proof may include testimony or records documenting the ownership, purchase price, or value of the property, or photographic or similar evidence showing the value of the property.

(b) The claimant complied with section 19.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002
Popular Name: Governmental Immunity Act

691.1418 Economic damages; grounds for noneconomic damages; available defenses.

Sec. 18.

(1) Except as provided in subsection (2), economic damages are the only compensation for a claim under section 17. Except as provided in subsection (2), a court shall not award and a governmental agency shall not pay noneconomic damages as compensation for an event.

(2) A governmental agency remains subject to tort liability for noneconomic damages caused by an event only if the claimant or the individual on whose behalf the claimant is making the claim has suffered death, serious impairment of body function, or permanent serious disfigurement.

(3) In an action for noneconomic damages under section 17, the issues of whether a claimant or the individual on whose behalf the claimant is making the claim has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(a) There is no factual dispute concerning the nature and extent of the claimant's or the individual's injuries.

(b) There is a factual dispute concerning the nature and extent of the claimant's or the individual's injuries, but the dispute is not material to determining whether the claimant or the individual has suffered a serious impairment of body function or permanent serious disfigurement.

(4) Unless this act provides otherwise, a party to a civil action brought under section 17 has all applicable common law and statutory defenses ordinarily available in civil actions, and is entitled to all rights and procedures available under the Michigan court rules.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002

Popular Name: Governmental Immunity Act

***** 691.1419 THIS SECTION DOES NOT APPLY TO NONECONOMIC DAMAGES MADE UNDER SECTION 17: See subsection (7) *****

691.1419 Notice of claim; requirements.

Sec. 19.

(1) Except as provided in subsections (3) and (7), a claimant is not entitled to compensation under section 17 unless the claimant notifies the governmental agency of a claim of damage or physical injury, in writing, within 45 days after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered. The written notice under this subsection shall contain the content required by subsection (2) (c) and shall be sent to the individual within the governmental agency designated in subsection (2)(b). To facilitate compliance with this section, a governmental agency owning or operating a sewage disposal system shall make available public information about the provision of notice under this section.

(2) If a person who owns or occupies affected property notifies a contacting agency orally or in writing of an event before providing a notice of a claim that complies with subsection (1), the contacting agency shall provide the person with all of the following information in writing:

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

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

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

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

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

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

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

(5) If a governmental agency receives a notice from a claimant or a different or additional governmental agency that complies with this section, the governmental agency receiving notice may inspect the damaged property or investigate the physical injury. A claimant or the owner or occupant of affected property shall not unreasonably refuse to allow a governmental agency subject to a claim to inspect damaged property or investigate a physical injury. This subsection does not prohibit a governmental agency from subsequently inspecting damaged property or investigating a physical injury during a civil action brought under section 17.

(6) If a governmental agency notified of a claim under subsection (1) and a claimant do not reach an agreement on the amount of compensation for the property damage or physical injury within 45 days after the receipt of notice under this section, the claimant may institute a civil action. A civil action shall not be commenced under section 17 until after that 45 days.

(7) This section does not apply to claims for noneconomic damages made under section 17.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002
Popular Name: Governmental Immunity Act