

**GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)**  
**Act 170 of 1964**

**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 U.S. Const., Amend. XIV, § 1, and Mich. Const., Art. I, § 2. *Reich v. State Highway Department*, 386 Mich. 617, 194 N.W.2d 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 N.W.2d 754 (1975); *Kerkstra v. Department of State Highways*, 398 Mich. 103, 247 N.W.2d 759 (1975).

**Popular name:** Governmental Immunity Act