

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 98

BY SENATOR TRUMP

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §17-10-17 of the Code of West Virginia, 1931, as amended, relating
 2 to civil actions for damages brought against county commissions and municipalities;
 3 providing an effective date; providing that a person who sustains injury as a result of any
 4 defect in, disrepair or maintenance of, or failure to maintain or repair certain county or
 5 municipal property may recover civil damages, subject to certain requirements and
 6 limitations; providing certain requirements and limitations for actions against the county
 7 commission or municipality; providing that county commissions and municipalities owe no
 8 duty to protect against, and are not liable for certain dangers or conditions that are open
 9 and obvious or reasonably apparent; providing a standard of application by courts; and
 10 providing that the section does not diminish or limit certain protections otherwise afforded
 11 in the code.

Be it enacted by the Legislature of West Virginia:

§17-10-17. Action for damages occasioned by ~~defective road, bridge, street, etc~~ defect in, disrepair or maintenance of, or failure to maintain or repair any road, bridge, street, sidewalk, alleyway, or public walkway, etc.

1 ~~Any person who sustains an injury to his person or property by reason of any road or~~
 2 ~~bridge under the control of the county court or any road, bridge, street, alley or sidewalk in any~~
 3 ~~incorporated city, town or village being out of repair due to the negligence of the county court,~~
 4 ~~incorporated city, town or village may recover all damages sustained by him by reason of such~~
 5 ~~injury in an action against the county court, city, town or village in which such road, bridge, street,~~
 6 ~~alley or sidewalk may be, except that such city, town or village shall not be subject to such action~~
 7 ~~unless it is required by charter, general law or ordinance to keep the road, bridge, street, alley or~~
 8 ~~sidewalk therein, at the place where such injury is sustained, in repair. If it is not so required, the~~
 9 ~~action and remedy shall be against the county court. When judgment is obtained against the~~
 10 ~~county court, such court shall at the time of the laying of the next annual levy, levy upon the~~
 11 ~~taxable property of the district in which such injury is sustained a sufficient sum to pay such~~

12 ~~judgment with interest and costs, and the costs of collecting the same, and when it is obtained~~
13 ~~against the city, town or village the proper municipal authorities thereof shall lay such levies at~~
14 ~~the time of levying the next annual levy on the property subject to taxation in such city, town or~~
15 ~~village. In case of a failure by either so to do, or to pay the judgment as required by law, the circuit~~
16 ~~court of the county for which such county court acts or in which such city, town or village or the~~
17 ~~major portion of the territory thereof is located shall compel the laying of such levy, or the payment~~
18 ~~of such judgment, or both, by mandamus~~

19 (a) Notwithstanding any other provision of the code to the contrary, beginning on July 1,
20 2019, all claims or actions against a county commission or municipality seeking damages for
21 injury to person or damage to property arising from or related to a slip, trip, fall, or similar injury
22 as a result of any defect in, disrepair, or maintenance of, or failure to maintain or repair any road,
23 bridge, street, sidewalk, alleyway, stairway, or other public walkway or area used for travel,
24 ingress, or egress that is owned, controlled, or maintained by a county commission or municipality
25 is subject to the requirements and limitations set forth in this section.

26 (b) Any person who sustains an injury to his or her person or property by reason of a slip,
27 trip, fall, or similar injury as a result of any defect in, disrepair, or maintenance of, or failure to
28 maintain or repair any road, bridge, street, sidewalk, alleyway, stairway, or other public walkway
29 or area used for travel, ingress, or egress that is owned, controlled, or maintained by a county
30 commission or municipality may recover civil damages sustained by him or her in an action
31 against the county commission or municipality, subject to the following requirements and
32 limitations:

33 (1) The injury and/or damage is directly caused by employees of the county commission
34 or municipality who are physically present at the site performing construction, maintenance,
35 repair, or cleaning, but excluding inspection of work being performed by others, or materials being
36 used by others, where and when the injury and/or damage is sustained; or

37 (2) The injury and/or damage arises from a defect in, disrepair of, or failure to maintain or

38 repair any road, bridge, street, sidewalk, alleyway, stairway, or other public walkway or area used
39 for travel, ingress, or egress, due to the gross negligence of the county commission or
40 municipality.

41 (c) With regard to any action subject to the requirements and limitations of this section,
42 the county commission or municipality owes no duty of care to protect against, and is not liable
43 for dangers or conditions that are open and obvious, reasonably apparent, or as well known to
44 the person injured as they are to the county commission or municipality. In its application of the
45 open and obvious doctrine, a court as a matter of law shall appropriately apply the doctrine
46 considering the nature and severity, or lack thereof, of violations of any statute, state rule, or
47 municipal ordinance relating to a cause of action.

48 (d) This section does not diminish or limit the protections afforded to county commissions
49 and municipalities by other provisions of this code, including, but not limited to, the immunities
50 granted by §29-12A-1 et seq. of this code.

NOTE: The purpose of this bill is to reform the liability of municipalities and county commissions for civil actions brought by reason of a slip and fall injury due to defect in or disrepair of municipal- or county-owned property.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.