

SENATE BILL No. 20

January 24, 1991, Introduced by Senators N. SMITH and
WELBORN and referred to the Committee on Judiciary.

A bill to amend sections 1483 and 6304 of Act No. 236 of the
Public Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

as added by Act No. 178 of the Public Acts of 1986, being sec-
tions 600.1483 and 600.6304 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1483 and 6304 of Act No. 236 of the
2 Public Acts of 1961, as added by Act No. 178 of the Public Acts
3 of 1986, being sections 600.1483 and 600.6304 of the Michigan
4 Compiled Laws, are amended to read as follows:

5 Sec. 1483. (1) ~~In~~ EXCEPT AS OTHERWISE PROVIDED IN
6 SUBSECTION (2), IN an action for damages alleging medical mal-
7 practice against a person or party specified in section 5838a,
8 damages for noneconomic loss ~~which exceeds \$225,000.00~~ THAT

1 EXCEED \$300,000.00 shall not be awarded unless ~~1 or more~~ EITHER
2 OR BOTH of the following circumstances exist:

3 ~~(a) There has been a death.~~

4 (A) ~~(b)~~ There has been an intentional tort.

5 ~~(c) A foreign object was wrongfully left in the body of the~~
6 ~~patient.~~

7 ~~(d) The injury involves the reproductive system of the~~
8 ~~patient.~~

9 (B) ~~(e)~~ The discovery of the existence of the claim was
10 prevented by the fraudulent conduct of a health care provider.

11 ~~(f) A limb or organ of the patient was wrongfully removed.~~

12 ~~(g) The patient has lost a vital bodily function.~~

13 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), IN AN
14 ACTION FOR DAMAGES ALLEGING MEDICAL MALPRACTICE AGAINST A PERSON
15 OR PARTY SPECIFIED IN SECTION 5838A, DAMAGES FOR NONECONOMIC LOSS
16 THAT EXCEED \$250,000.00 SHALL NOT BE AWARDED IF THE ACTION
17 INVOLVES EITHER OR BOTH OF THE FOLLOWING CIRCUMSTANCES:

18 (A) THE INJURY IS ALLEGED TO HAVE BEEN CAUSED BY A PHYSICIAN
19 EMPLOYED BY, OR UNDER CONTRACT TO, A HOSPITAL OR A HOSPITAL EMER-
20 GENCY ROOM, AS A RESULT OF TREATMENT RENDERED IN A HOSPITAL EMER-
21 GENCY ROOM, UNDER CIRCUMSTANCES THAT DID NOT ALLOW THE PHYSICIAN
22 TIME TO TAKE A MEDICAL HISTORY OF THE PATIENT OR TO CONSULT OTHER
23 MEDICAL RECORDS OF THE PATIENT IN A TIMELY MANNER.

24 (B) THE INJURY IS ALLEGED TO HAVE BEEN CAUSED BY A PHYSICIAN
25 WHO DELIVERED AN INFANT OF A PATIENT UNDER CIRCUMSTANCES WHERE NO
26 PHYSICIAN-PATIENT RELATIONSHIP EXISTED BEFORE THE DELIVERY OR
27 WHERE THE MEDICAL RECORDS FOR THE PATIENT WERE INADEQUATE OR

1 UNAVAILABLE FOR CONSULTATION BY THE PHYSICIAN IN A TIMELY
2 MANNER.

3 (3) SUBSECTION (2) DOES NOT APPLY IF THERE HAS BEEN AN
4 INTENTIONAL TORT OR IF THE DISCOVERY OF THE CLAIM WAS PREVENTED
5 BY THE FRAUDULENT CONDUCT OF A HEALTH CARE PROVIDER.

6 (4) ~~-(2)-~~ In awarding damages in an action alleging medical
7 malpractice, the trier of fact shall itemize damages into eco-
8 nomic and noneconomic damages.

9 (5) ~~-(3)-~~ ~~"Noneconomic"~~ AS USED IN THIS SECTION, "NONECONOMIC
10 loss" means damages or loss due to pain, suffering, inconve-
11 nience, physical impairment, physical disfigurement, or other
12 noneconomic loss.

13 (6) ~~-(4)-~~ ~~The limitation~~ THE STATE TREASURER SHALL INCREASE
14 THE LIMITATIONS on noneconomic damages set forth in ~~subsection~~
15 ~~-(1)- shall be increased~~ SUBSECTIONS (1) AND (2) by an amount
16 determined by the state treasurer at the end of each calendar
17 year to reflect the cumulative annual percentage increase in the
18 consumer price index. As used in this subsection, "consumer
19 price index" means the most comprehensive index of consumer
20 prices available for this state from the bureau of labor statis-
21 tics of the United States department of labor.

22 Sec. 6304. (1) In a personal injury action involving fault
23 of more than 1 party to the action, including third-party
24 defendants, the court, unless otherwise agreed by all parties to
25 the action, shall instruct the jury to answer special interroga-
26 tories or, if there is no jury, shall make findings indicating
27 both of the following:

1 (a) The total amount of each plaintiff's damages.

2 (b) The percentage of the total fault of all of the parties
3 regarding each claim as to each plaintiff, defendant, and
4 third-party defendant.

5 (2) In determining the percentages of fault under subsection
6 (1)(b), the trier of fact shall consider both the nature of the
7 conduct of each party at fault and the extent of the causal rela-
8 tion between the conduct and the damages claimed.

9 (3) If it is determined under subsections (1) and (2) that a
10 plaintiff is not at fault, subsections (5) and (6) ~~shall~~ DO not
11 apply.

12 (4) Subsections (5) and (6) ~~shall~~ DO not apply to a prod-
13 ucts liability action, as defined in section 2945.

14 (5) The court shall determine the award of damages to each
15 plaintiff in accordance with the findings under subsection (1),
16 subject to any reduction under sections 2925d and 6303, and enter
17 judgment against each party, including a third-party defendant,
18 except that THE COURT SHALL NOT ENTER judgment ~~shall not be~~
19 ~~entered~~ against a person who has been released from liability
20 pursuant to section 2925d. Except as otherwise provided in sub-
21 section (6), THE COURT SHALL NOT REQUIRE a person ~~shall not be~~
22 ~~required~~ to pay damages in an amount greater than his or her
23 percentage of fault.

24 (6) Except as otherwise provided in this subsection and
25 ~~subsection~~ SUBSECTIONS (7) AND (8), upon motion made not later
26 than 6 months after a final judgment is entered, the court shall
27 determine whether all or part of a party's share of the

1 obligation is uncollectible from that party, and shall reallocate
2 any uncollectible amount among the other parties according to
3 their respective percentages of fault as determined under subsec-
4 tion (1). ~~-A-~~ THE COURT SHALL NOT REQUIRE A party ~~shall not be~~
5 ~~required~~ to pay a percentage of any uncollectible amount ~~which~~
6 THAT exceeds that party's percentage of fault as determined under
7 subsection (1). The party whose liability is reallocated ~~shall~~
8 ~~continue~~ CONTINUES to be subject to contribution and to any con-
9 tinuing liability to the plaintiff on the judgment.

10 (7) IN AN ACTION FOR DAMAGES ALLEGING MEDICAL MALPRACTICE
11 AGAINST A PERSON OR PARTY SPECIFIED IN SECTION 5838A, IF A
12 DEFENDANT IS DETERMINED UNDER SUBSECTION (1) TO BE LESS THAN 50%
13 AT FAULT, THE COURT SHALL NOT REQUIRE THAT DEFENDANT TO PAY A
14 PERCENTAGE OF ANY UNCOLLECTIBLE AMOUNT THAT EXCEEDS THE
15 DEFENDANT'S DETERMINED PERCENTAGE OF FAULT.

16 (8) ~~-(7)-~~ Notwithstanding subsection (3), THE COURT SHALL
17 NOT REQUIRE a governmental agency, other than a governmental hos-
18 pital or medical care facility, ~~shall not be required~~ to pay a
19 percentage of any uncollectible amount ~~which~~ THAT exceeds the
20 governmental agency's percentage of fault as determined under
21 subsection (1).