

# SENATE BILL No. 44

February 5, 1991, Introduced by Senators WARTNER, EMMONS, PRIDNIA, EHLERS, CARL, CRUCE and WELBORN and referred to the Committee on Judiciary.

A bill to amend sections 2945, 2946, 2947, 2948, and 2949 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," being sections 600.2945, 600.2946, 600.2947, 600.2948, and 600.2949 of the Michigan Compiled Laws; and to add sections 2946a, 2946b, and 2949a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2945, 2946, 2947, 2948, and 2949 of Act  
2 No. 236 of the Public Acts of 1961, being sections 600.2945,  
3 600.2946, 600.2947, 600.2948, and 600.2949 of the Michigan  
4 Compiled Laws, are amended and sections 2946a, 2946b, and 2949a  
5 are added to read as follows:

6 Sec. 2945. As used in sections 2946 to ~~2949~~ 2949A and  
7 section 5805: ~~—, "products—~~

1 (A) "BEYOND A REASONABLE DOUBT" MEANS THE MEASURE OR DEGREE  
2 OF PROOF THAT WILL PRODUCE IN THE MIND OF THE TRIER OF FACT NO  
3 REASONABLE DOUBT AS TO THE TRUTH OF THE ALLEGATION SOUGHT TO BE  
4 ESTABLISHED.

5 (B) "CLEAR AND CONVINCING EVIDENCE" MEANS THAT MEASURE OR  
6 DEGREE OF PROOF THAT WILL PRODUCE IN THE MIND OF THE TRIER OF  
7 FACT A FIRM BELIEF OR CONVICTION AS TO THE TRUTH OF THE ALLEGA-  
8 TIONS SOUGHT TO BE ESTABLISHED. THE LEVEL OF PROOF REQUIRED TO  
9 ESTABLISH CLEAR AND CONVINCING EVIDENCE IS MORE THAN THAT  
10 REQUIRED UNDER PREPONDERANCE OF THE EVIDENCE, BUT LESS THAN THAT  
11 REQUIRED FOR PROOF BEYOND A REASONABLE DOUBT.

12 (C) "PREPONDERANCE OF THE EVIDENCE" MEANS THE MEASURE OR  
13 DEGREE OF PROOF THAT IS OF GREATER WEIGHT OR MORE CONVINCING IN  
14 THE MIND OF THE TRIER OF FACT THAN THE MEASURE OR DEGREE OF PROOF  
15 THAT IS OFFERED IN OPPOSITION TO THE TRUTH OF THE ALLEGATION  
16 SOUGHT TO BE ESTABLISHED.

17 (D) "PRODUCTS liability action" means an action based on  
18 ~~any~~ A legal or equitable theory of liability brought for or on  
19 account of death or injury to person or property caused by or  
20 resulting from the manufacture, construction, design, ~~formula~~  
21 FORMULATION, development of standards, PERFORMANCE, preparation,  
22 processing, assembly, inspection, testing, listing, certifying,  
23 warning, instructing, marketing, advertising, packaging, or  
24 labeling of a product or a component of a product.

25 Sec. 2946. (1) ~~It shall be admissible as evidence~~ A PRE-  
26 SUMPTION ARISES in a products liability action that the  
27 manufacture, construction, design, ~~formula~~ FORMULATION,

1 development of standards, PERFORMANCE, preparation, processing,  
2 assembly, inspection, testing, listing, certifying, warning,  
3 instructing, marketing, advertising, packaging, or labeling OF A  
4 PRODUCT OR A COMPONENT OF A PRODUCT WAS NOT DEFECTIVE IF THE MAN-  
5 UFACTURE, CONSTRUCTION, DESIGN, FORMULATION, DEVELOPMENT OF STAN-  
6 DARDS, PERFORMANCE, PREPARATION, PROCESSING, ASSEMBLY, INSPEC-  
7 TION, TESTING, LISTING, CERTIFYING, WARNING, INSTRUCTING, MARKET-  
8 ING, ADVERTISING, PACKAGING, OR LABELING was done pursuant to the  
9 generally recognized and prevailing nongovernmental standards in  
10 existence at the time the product was sold or delivered by the  
11 defendant to the initial purchaser or user. THIS PRESUMPTION MAY  
12 BE REBUTTED ONLY BY CLEAR AND CONVINCING EVIDENCE.

13       (2) IN A PRODUCTS LIABILITY ACTION BROUGHT AGAINST A MANU-  
14 FACTURER OR SELLER FOR HARM ALLEGEDLY CAUSED BY A PRODUCT DESIGN,  
15 A MANUFACTURER OR SELLER IS NOT LIABLE IF, AT THE TIME THE PROD-  
16 UCT LEFT THE CONTROL OF THE MANUFACTURER, A PRACTICAL AND TECHNI-  
17 CALLY FEASIBLE ALTERNATIVE DESIGN WAS NOT AVAILABLE THAT WOULD  
18 HAVE PREVENTED THE HARM WITHOUT IMPAIRING THE USEFULNESS OR  
19 DESIRABILITY OF THE PRODUCT TO USERS. AN ALTERNATIVE DESIGN IS  
20 PRACTICAL AND FEASIBLE IF THE TECHNICAL, MEDICAL, AND SCIENTIFIC  
21 KNOWLEDGE RELATING TO THE SAFETY OF THE PRODUCT WAS, AT THE TIME  
22 THE PRODUCT LEFT THE CONTROL OF THE MANUFACTURER, DEVELOPED,  
23 AVAILABLE, AND CAPABLE OF USE IN THE MANUFACTURE OF THE PRODUCT,  
24 AND ECONOMICALLY FEASIBLE FOR USE BY THE MANUFACTURER.

25       (3) ~~-(2) It shall be admissible in evidence-~~ A PRESUMPTION  
26 ARISES in a products liability action that the manufacture,  
27 construction, design, ~~-formula-~~ FORMULATION, development of

1 standards, PERFORMANCE, preparation, processing, assembly,  
2 inspection, testing, listing, certifying, warning, instructing,  
3 marketing, advertising, packaging, or labeling OF A PRODUCT OR A  
4 COMPONENT OF A PRODUCT, WAS NOT DEFECTIVE IF THE MANUFACTURE,  
5 CONSTRUCTION, DESIGN, FORMULATION, DEVELOPMENT OF STANDARDS, PER-  
6 FORMANCE, PREPARATION, PROCESSING, ASSEMBLY, INSPECTION, TESTING,  
7 LISTING, CERTIFYING, WARNING, INSTRUCTING, MARKETING, ADVERTIS-  
8 ING, PACKAGING, OR LABELING was done pursuant to the federal and  
9 state law, rules, or regulations in effect at the time the prod-  
10 uct was sold or delivered by the defendant to the initial pur-  
11 chaser or user. THIS PRESUMPTION MAY BE REBUTTED ONLY BY CLEAR  
12 AND CONVINCING EVIDENCE.

13       (4) IN A PRODUCTS LIABILITY ACTION BROUGHT AGAINST A MANU-  
14 FACTURER OR SELLER FOR HARM ALLEGEDLY CAUSED BY THE MANUFACTURE,  
15 CONSTRUCTION, DESIGN, FORMULATION, DEVELOPMENT OF STANDARDS, PER-  
16 FORMANCE, PREPARATION, PROCESSING, ASSEMBLY, INSPECTION, TESTING,  
17 LISTING, CERTIFYING, WARNING, INSTRUCTING, MARKETING, ADVERTIS-  
18 ING, PACKAGING, OR LABELING OF A PRODUCT OR A COMPONENT OF A  
19 PRODUCT, THE MANUFACTURER OR SELLER IS NOT LIABLE IF THE ASPECT  
20 OF THE MANUFACTURE, CONSTRUCTION, DESIGN, FORMULATION, DEVELOP-  
21 MENT OF STANDARDS, PERFORMANCE, PREPARATION, PROCESSING, ASSEM-  
22 BLY, INSPECTION, TESTING, LISTING, CERTIFYING, WARNING, INSTRUCT-  
23 ING, MARKETING, ADVERTISING, PACKAGING, OR LABELING THAT  
24 ALLEGEDLY CAUSED THE HARM WAS SPECIFICALLY ADOPTED BY A FEDERAL  
25 LAW OR APPROVED BY OR IN COMPLIANCE WITH STANDARDS PROMULGATED BY  
26 AN AGENCY OF THE FEDERAL GOVERNMENT RESPONSIBLE FOR THE SAFETY OF  
27 THE PRODUCT BEFORE THE PRODUCT WAS SOLD OR DELIVERED BY THE

1 DEFENDANT TO THE INITIAL PURCHASER OR USER. THIS SUBSECTION DOES  
2 NOT APPLY IF THE PLAINTIFF PRESENTS CLEAR AND CONVINCING EVIDENCE  
3 THAT THE MANUFACTURER OR SELLER INTENTIONALLY WITHHELD FROM CON-  
4 GRESS OR THE AGENCY OF THE FEDERAL GOVERNMENT MATERIAL INFORMA-  
5 TION RELATIVE TO THE SAFETY OF THE PRODUCT.

6 (5) ~~-(3)-~~ Evidence of a change in the philosophy, theory,  
7 knowledge, technique, or procedures of or with regard to the man-  
8 ufacture, construction, design, ~~-formula-~~ FORMULATION, develop-  
9 ment of standards, PERFORMANCE, preparation, processing, assem-  
10 bly, inspection, testing, listing, certifying, warning, instruct-  
11 ing, marketing, advertising, packaging, or labeling made,  
12 learned, placed in use, or discontinued after the ~~-event of death~~  
13 ~~or injury to person or property shall not be~~ MANUFACTURE OR SALE  
14 OF THE PRODUCT IS NOT admissible in a ~~-product-~~ PRODUCTS liabil-  
15 ity action. ~~-to prove liability.-~~

16 SEC. 2946A. (1) IN A PRODUCTS LIABILITY ACTION, A PERSON  
17 SHALL NOT GIVE EXPERT TESTIMONY ON THE APPROPRIATE MANUFACTURE,  
18 CONSTRUCTION, DESIGN, FORMULATION, DEVELOPMENT OF STANDARDS, PER-  
19 FORMANCE, PREPARATION, PROCESSING, ASSEMBLY, INSPECTION, TESTING,  
20 LISTING, CERTIFYING, WARNING, INSTRUCTING, MARKETING, ADVERTIS-  
21 ING, PACKAGING, OR LABELING OF A PRODUCT OR A COMPONENT OF A  
22 PRODUCT UNLESS THE PERSON MEETS BOTH OF THE FOLLOWING CRITERIA:

23 (A) SPECIALIZES IN, OR AT THE TIME OF THE OCCURRENCE THAT IS  
24 THE BASIS FOR THE ACTION SPECIALIZED IN, THE SUBJECT MATTER IN  
25 WHICH HE OR SHE IS TESTIFYING.

26 (B) DEVOTES, OR AT THE TIME OF THE OCCURRENCE THAT IS THE  
27 BASIS FOR THE ACTION DEVOTED, A SUBSTANTIAL PORTION OF HIS OR HER

1 PROFESSIONAL TIME TO THE ACTIVE PRACTICE IN THE SUBJECT MATTER IN  
2 WHICH HE OR SHE IS TESTIFYING.

3 (2) IN DETERMINING THE QUALIFICATIONS OF AN EXPERT WITNESS  
4 IN A PRODUCTS LIABILITY ACTION, THE COURT, AT A MINIMUM, SHALL  
5 EVALUATE ALL OF THE FOLLOWING:

6 (A) THE EDUCATIONAL AND PROFESSIONAL TRAINING OF THE EXPERT  
7 WITNESS.

8 (B) THE AREA OF SPECIALIZATION OF THE EXPERT WITNESS.

9 (C) THE LENGTH OF TIME THE EXPERT WITNESS HAS BEEN ENGAGED  
10 IN THE ACTIVE PRACTICE IN THE SUBJECT MATTER IN WHICH HE OR SHE  
11 IS TESTIFYING.

12 (D) THE RELEVANCY OF THE EXPERT WITNESS'S TESTIMONY.

13 (3) THIS SECTION DOES NOT LIMIT THE POWER OF THE TRIAL COURT  
14 TO DISQUALIFY AN EXPERT WITNESS ON GROUNDS OTHER THAN THE QUALI-  
15 FICATIONS SET FORTH IN THIS SECTION.

16 (4) IN A PRODUCTS LIABILITY ACTION, AN EXPERT WITNESS SHALL  
17 NOT TESTIFY ON A CONTINGENCY FEE BASIS. A PERSON WHO VIOLATES  
18 THIS SUBSECTION IS GUILTY OF A MISDEMEANOR.

19 SEC. 2946B. (1) IN A PRODUCTS LIABILITY ACTION, A COURT  
20 SHALL NOT AWARD DAMAGES FOR NONECONOMIC LOSS THAT EXCEED  
21 \$225,000.00 UNLESS 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES  
22 EXIST:

23 (A) THERE HAS BEEN A DEATH.

24 (B) THE INJURY INVOLVES THE REPRODUCTIVE SYSTEM OF THE  
25 PARTY.

26 (C) THE DISCOVERY OF THE EXISTENCE OF THE CLAIM WAS  
27 PREVENTED BY THE FRAUDULENT CONDUCT OF THE DEFENDANT.

1 (D) THE PARTY HAS LOST A VITAL BODILY FUNCTION.

2 (2) IN AWARDING DAMAGES IN A PRODUCTS LIABILITY ACTION, THE  
3 TRIER OF FACT SHALL ITEMIZE DAMAGES INTO ECONOMIC AND NONECONOMIC  
4 DAMAGES.

5 (3) "NONECONOMIC LOSS" INCLUDES, BUT IS NOT LIMITED TO, DAM-  
6 AGES OR LOSS DUE TO PAIN, SUFFERING, INCONVENIENCE, PHYSICAL  
7 IMPAIRMENT, OR PHYSICAL DISFIGUREMENT.

8 (4) THE STATE TREASURER SHALL ADJUST THE LIMITATION ON NON-  
9 ECONOMIC DAMAGES SET FORTH IN SUBSECTION (1) BY AN AMOUNT DETER-  
10 MINED BY THE STATE TREASURER AT THE END OF EACH CALENDAR YEAR TO  
11 REFLECT THE CUMULATIVE ANNUAL PERCENTAGE CHANGE IN THE CONSUMER  
12 PRICE INDEX. AS USED IN THIS SUBSECTION, "CONSUMER PRICE INDEX"  
13 MEANS THE MOST COMPREHENSIVE INDEX OF CONSUMER PRICES AVAILABLE  
14 FOR THIS STATE FROM THE BUREAU OF LABOR STATISTICS OF THE UNITED  
15 STATES DEPARTMENT OF LABOR.

16 Sec. 2947. (1) It ~~shall be admissible as evidence in~~ IS  
17 AN ABSOLUTE DEFENSE TO a products liability action that ~~the~~ A  
18 PROXIMATE cause of the death OF A PERSON or THE injury to A  
19 person or property was an alteration or modification of the prod-  
20 uct, or its application or use, made by a person other than, and  
21 without specific directions from, the defendant.

22 (2) IT IS AN ABSOLUTE DEFENSE TO A PRODUCTS LIABILITY ACTION  
23 THAT THE DEATH OF A PERSON OR THE INJURY TO A PERSON OR PROPERTY  
24 OCCURRED 15 OR MORE YEARS AFTER THE PRODUCT WAS SOLD OR DELIVERED  
25 BY THE DEFENDANT TO THE INITIAL PURCHASER OR USER. THIS SUBSEC-  
26 TION DOES NOT APPLY TO A DRUG OR AN IMPLANTED DEVICE. AS USED IN  
27 THIS SUBSECTION:

1 (A) "DRUG" MEANS A SUBSTANCE RECOGNIZED AS A DRUG IN THE  
2 OFFICIAL UNITED STATES PHARMACOPOEIA, OFFICIAL HOMEOPATHIC PHAR-  
3 MACOPOEIA OF THE UNITED STATES, OR OFFICIAL NATIONAL FORMULARY,  
4 OR A SUPPLEMENT TO THEM; A SUBSTANCE INTENDED FOR USE IN THE  
5 DIAGNOSIS, CURE, MITIGATION, TREATMENT, OR PREVENTION OF DISEASE  
6 IN HUMAN BEINGS OR ANIMALS; A SUBSTANCE OTHER THAN FOOD INTENDED  
7 TO AFFECT THE STRUCTURE OR A FUNCTION OF THE BODY OF HUMAN BEINGS  
8 OR ANIMALS; OR, A SUBSTANCE INTENDED FOR USE AS A COMPONENT OF AN  
9 ARTICLE SPECIFIED IN THIS SUBSECTION.

10 (B) "IMPLANTED DEVICE" MEANS A MECHANISM, APPARATUS, OR CON-  
11 TRIVANCE THAT IS IMPLANTED WITHIN THE BODY OF A HUMAN BEING FOR  
12 THE CURE, MITIGATION, TREATMENT, OR PREVENTION OF DISEASE IN A  
13 HUMAN BEING, OR TO AFFECT A STRUCTURE OR FUNCTION OF PART OF THE  
14 BODY OF A HUMAN BEING.

15 (3) IT IS AN ABSOLUTE DEFENSE TO A PRODUCTS LIABILITY ACTION  
16 INVOLVING A LIMITED LIFE PRODUCT THAT THE DEATH OF THE PERSON OR  
17 THE INJURY TO THE PERSON OR PROPERTY OCCURRED AFTER AN IDENTIFIED  
18 EXPIRATION DATE FOR THE LIMITED LIFE PRODUCT. AS USED IN THIS  
19 SUBSECTION, "LIMITED LIFE PRODUCT" MEANS A PRODUCT THAT IS  
20 DESIGNED TO BE USED ONLY DURING A SPECIFIC PERIOD OF TIME AFTER  
21 MANUFACTURE AND UPON THE EXPIRATION OF SUCH PERIOD OF TIME  
22 BECOMES USELESS, INEFFECTIVE, OR DANGEROUS OR CARRIES A  
23 MANUFACTURER'S WARNING AGAINST USE OF THE PRODUCT AFTER THE SPE-  
24 CIFIC PERIOD OF TIME.

25 (4) IT IS AN ABSOLUTE DEFENSE TO A PRODUCTS LIABILITY ACTION  
26 THAT A PROXIMATE CAUSE OF THE DEATH OF OR INJURY TO A PERSON WAS



1 THAT THE PERSON WHO SUFFERED THE INJURY OR DEATH WAS UNDER THE  
2 INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE.

3       Sec. 2948. (1) ~~It shall be admissible as evidence~~ A PRE-  
4 SUMPTION ARISES in a products liability action that THE WARNING,  
5 INSTRUCTING, OR LABELING OF A PRODUCT OR A COMPONENT OF A PRODUCT  
6 WAS ADEQUATE IF, before the ~~event of~~ death or THE injury to A  
7 person or property, pamphlets, booklets, labels, or other written  
8 warnings were provided ~~which~~ THAT gave notice to ~~foreseeable~~-  
9 REASONABLY ANTICIPATED users of the material risk of injury,  
10 death, or damage connected with the ~~foreseeable~~ REASONABLY  
11 ANTICIPATED use of the product or provided instructions as to the  
12 ~~foreseeable~~ REASONABLY ANTICIPATED uses, applications, or limi-  
13 tations of the product ~~which~~ THAT the defendant knew or should  
14 have known. THIS PRESUMPTION MAY BE REBUTTED ONLY BY CLEAR AND  
15 CONVINCING EVIDENCE.

16       (2) NOTWITHSTANDING SUBSECTION (1), A DEFENDANT IS NOT  
17 LIABLE FOR FAILURE TO WARN OF MATERIAL RISKS THAT ARE OR SHOULD  
18 BE OBVIOUS TO A REASONABLY PRUDENT PRODUCT USER AND MATERIAL  
19 RISKS THAT ARE OR SHOULD BE A MATTER OF COMMON KNOWLEDGE TO PER-  
20 SONS IN THE SAME OR SIMILAR POSITION AS THE PLAINTIFF IN A PROD-  
21 UCTS LIABILITY ACTION.

22       (3) IN A PRODUCTS LIABILITY ACTION BROUGHT AGAINST A MANU-  
23 FACTURER OR SELLER FOR HARM ALLEGEDLY CAUSED BY A FAILURE TO PRO-  
24 VIDE ADEQUATE WARNINGS OR INSTRUCTIONS, A MANUFACTURER OR SELLER  
25 IS NOT LIABLE IF, AT THE TIME THE PRODUCT LEFT THE CONTROL OF THE  
26 MANUFACTURER, THE KNOWLEDGE OF THE DANGER THAT CAUSED THE HARM

1 WAS NOT REASONABLY AVAILABLE OR OBTAINABLE IN LIGHT OF EXISTING  
2 SCIENTIFIC, TECHNICAL, OR MEDICAL INFORMATION.

3       Sec. 2949. (1) In ~~all products liability actions brought~~  
4 ~~to recover damages resulting from death or injury to person or~~  
5 ~~property, the fact that the plaintiff may have been guilty of~~  
6 ~~contributory negligence shall not bar a recovery by the plaintiff~~  
7 ~~or the plaintiff's legal representatives, but damages sustained~~  
8 ~~by the plaintiff shall be diminished in proportion to the amount~~  
9 ~~of negligence attributed to the plaintiff.~~ A PRODUCTS LIABILITY  
10 ACTION INVOLVING FAULT OF MORE THAN 1 PARTY, INCLUDING  
11 THIRD-PARTY DEFENDANTS AND PERSONS WHO HAVE BEEN RELEASED FROM  
12 LIABILITY PURSUANT TO SECTION 2925D, THE COURT, UNLESS OTHERWISE  
13 AGREED BY ALL PARTIES TO THE ACTION, SHALL INSTRUCT THE JURY TO  
14 ANSWER SPECIAL INTERROGATORIES OR, IF THERE IS NO JURY, SHALL  
15 MAKE FINDINGS AS TO BOTH OF THE FOLLOWING:

16       (A) THE TOTAL AMOUNT OF EACH CLAIMANT'S DAMAGES.

17       (B) THE PERCENTAGE OF THE TOTAL FAULT OF ALL OF THE PARTIES  
18 REGARDING EACH CLAIM AS TO EACH CLAIMANT, DEFENDANT, AND  
19 THIRD-PARTY DEFENDANT AND PERSON WHO HAS BEEN RELEASED FROM  
20 LIABILITY PURSUANT TO SECTION 2925D.

21       (2) IN DETERMINING THE PERCENTAGES OF FAULT UNDER SUBSECTION  
22 (1)(B), THE TRIER OF FACT SHALL CONSIDER BOTH THE NATURE OF THE  
23 CONDUCT OF EACH PARTY AT FAULT AND THE EXTENT OF THE CAUSAL RELA-  
24 TION BETWEEN THE CONDUCT AND THE DAMAGES CLAIMED.

25       (3) THE COURT SHALL DETERMINE THE AWARD OF DAMAGES TO EACH  
26 CLAIMANT IN ACCORDANCE WITH THE FINDINGS UNDER SUBSECTION (1),  
27 SUBJECT TO ANY REDUCTION UNDER SECTION 2925D(B) OR 6303, AND

1 ENTER JUDGMENT AGAINST EACH PARTY EXCEPT THAT THE COURT SHALL NOT  
2 ENTER JUDGMENT AGAINST A PERSON WHO HAS BEEN RELEASED FROM  
3 LIABILITY PURSUANT TO SECTION 2925D. EXCEPT AS PROVIDED IN SUB-  
4 SECTION (4), THE COURT SHALL NOT REQUIRE A PERSON TO PAY DAMAGES  
5 IN AN AMOUNT GREATER THAN HIS OR HER RELATIVE DEGREE OF FAULT.

6 (4) UPON MOTION MADE NOT LATER THAN 1 YEAR AFTER JUDGMENT IS  
7 ENTERED, THE COURT SHALL DETERMINE WHETHER ALL OR PART OF A  
8 PARTY'S EQUITABLE SHARE OF THE OBLIGATION IS UNCOLLECTIBLE FROM  
9 THAT PARTY, AND SHALL REALLOCATE ANY UNCOLLECTIBLE AMOUNT AMONG  
10 THE OTHER PARTIES, INCLUDING A CLAIMANT AT FAULT, BUT NOT INCLUD-  
11 ING A PERSON WHO HAS BEEN RELEASED FROM LIABILITY PURSUANT TO  
12 SECTION 2925D, ACCORDING TO THEIR RESPECTIVE PERCENTAGES OF FAULT  
13 AS DETERMINED UNDER SUBSECTION (1). THE COURT SHALL NOT REQUIRE  
14 A PARTY TO PAY A PERCENTAGE OF AN UNCOLLECTIBLE AMOUNT THAT  
15 EXCEEDS THAT PARTY'S PERCENTAGE OF FAULT AS DETERMINED UNDER SUB-  
16 SECTION (1). THE PARTY WHOSE LIABILITY IS REALLOCATED CONTINUES  
17 TO BE SUBJECT TO CONTRIBUTION AND TO ANY CONTINUING LIABILITY TO  
18 THE CLAIMANT ON THE JUDGMENT.

19 (5) ~~-(2)-~~ If the court determines that the claim or defense  
20 is frivolous, the court may award costs and reasonable attorney's  
21 fees to the prevailing party in a products liability action.

22 SEC. 2949A. IN A PRODUCTS LIABILITY ACTION, IF AN  
23 ATTORNEY'S COMPENSATION IS DEPENDENT OR CONTINGENT IN WHOLE OR IN  
24 PART UPON THE AMOUNT OF THE RECOVERY IN THE ACTION PURSUANT TO AN  
25 EXPRESS OR IMPLIED AGREEMENT, THE ATTORNEY SHALL NOT RECOVER COM-  
26 PENSATION UNDER THAT AGREEMENT THAT EXCEEDS THE FOLLOWING:

1 (A) FORTY PERCENT OF THE FIRST \$5,000.00 RECOVERED.

2 (B) THIRTY-FIVE PERCENT OF THE NEXT \$20,000.00 OR LESS  
3 RECOVERED ABOVE \$5,000.00.

4 (C) TWENTY-FIVE PERCENT OF THE NEXT \$225,000.00 OR LESS  
5 RECOVERED ABOVE \$25,000.00.

6 (D) TWENTY PERCENT OF THE NEXT \$250,000.00 OR LESS RECOVERED  
7 ABOVE \$250,000.00.

8 (E) TEN PERCENT OF ANY AMOUNT RECOVERED ABOVE \$500,000.00.