

SENATE BILL No. 249

April 10, 1991, Introduced by Senators DE GROW, SCHWARZ, EHLERS, CISKY, WARTNER, EMMONS, MC MANUS, DILLINGHAM, N. SMITH, POSTHUMUS, GAST, PRIDNIA, DUNASKISS, KOIVISTO, WELBORN, BARCIA, DI NELLO and GEAKE and referred to the Committee on Judiciary.

A bill to amend the title and sections 1483, 2169, 2912, 2912a, 5805, 5838a, 5851, 6013, 6098, 6301, 6303, 6304, 6305, 6306, 6307, and 6309 of Act No. 236 of the Public Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

sections 1483, 2169, 5838a, 6098, 6301, 6303, 6304, 6305, 6306, 6307, and 6309 as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986, section 5805 as amended by Act No. 115 of the Public Acts of 1988, and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912, 600.2912a, 600.5805, 600.5838a, 600.5851, 600.6013, 600.6098, 600.6301, 600.6303, 600.6304, 600.6305, 600.6306, 600.6307, and 600.6309 of the Michigan Compiled Laws; and to add sections 955 and 2912f.

1 Section 1. The title and sections 1483, 2169, 2912, 2912a,
2 5805, 5838a, 5851, 6013, 6098, 6301, 6303, 6304, 6305, 6306,
3 6307, and 6309 of Act No. 236 of the Public Acts of 1961, sec-
4 tions 1483, 2169, 5838a, 6098, 6301, 6303, 6304, 6305, 6306,
5 6307, and 6309 as added and section 5851 as amended by Act
6 No. 178 of the Public Acts of 1986, section 5805 as amended by
7 Act No. 115 of the Public Acts of 1988, and section 6013 as
8 amended by Act No. 50 of the Public Acts of 1987, being sections
9 600.1483, 600.2169, 600.2912, 600.2912a, 600.5805, 600.5838a,
10 600.5851, 600.6013, 600.6098, 600.6301, 600.6303, 600.6304,
11 600.6305, 600.6306, 600.6307, and 600.6309 of the Michigan
12 Compiled Laws, are amended and sections 955 and 2912f are added
13 to read as follows:

1 this act; and to repeal all acts and parts of acts inconsistent
2 with, or contravening any of the provisions of this act.

3 SEC. 955. (1) AS USED IN THIS SECTION:

4 (A) "CONTINGENCY FEE AGREEMENT" MEANS AN AGREEMENT THAT AN
5 ATTORNEY'S FEE IS DEPENDENT OR CONTINGENT, IN WHOLE OR IN PART,
6 UPON SUCCESSFUL PROSECUTION OR SETTLEMENT OF A CLAIM OR ACTION,
7 OR UPON THE AMOUNT OF RECOVERY.

8 (B) "PROPERLY CHARGEABLE DISBURSEMENTS" MEANS REASONABLE
9 EXPENSES INCURRED AND PAID BY AN ATTORNEY ON A CLIENT'S BEHALF IN
10 PROSECUTING OR SETTLING A CLAIM OR ACTION.

11 (C) "RECOVERY" MEANS THE AMOUNT TO BE PAID TO AN ATTORNEY'S
12 CLIENT AS A RESULT OF A SETTLEMENT OR MONEY JUDGMENT.

13 (2) IN A CLAIM OR ACTION FILED UNDER THIS ACT FOR PERSONAL
14 INJURY OR WRONGFUL DEATH BASED UPON THE ALLEGED CONDUCT OF
15 ANOTHER AND IN A COMPLAINT FILED UNDER THE MICHIGAN MEDICAL
16 LIABILITY DETERMINATION ACT, IF AN ATTORNEY ENTERS INTO A CONTIN-
17 GENCY FEE AGREEMENT, THE ATTORNEY'S FEE SHALL NOT EXCEED THE
18 FOLLOWING:

19 (A) IF THE CLAIM OR ACTION OR COMPLAINT IS SETTLED BEFORE A
20 COMPLAINT IS FILED, 15% OF THE RECOVERY.

21 (B) IF THE CLAIM OR ACTION OR COMPLAINT IS SETTLED AFTER A
22 COMPLAINT IS FILED, BUT BEFORE THE DATE OF TRIAL OR HEARING, 20%
23 OF THE RECOVERY.

24 (C) IF A MONEY JUDGMENT IS AWARDED TO THE ATTORNEY'S CLIENT
25 OR IF THE CLAIM OR ACTION OR COMPLAINT IS SETTLED DURING OR AFTER
26 TRIAL, AS FOLLOWS:

1 (i) IF THE RECOVERY IS LESS THAN \$100,000.00, 33-1/3% OF THE
2 RECOVERY.

3 (ii) IF THE RECOVERY IS \$100,000.00 OR MORE BUT LESS THAN
4 \$1,000,000.00, 25% OF THE RECOVERY.

5 (iii) IF THE RECOVERY IS \$1,000,000.00 OR MORE, 20% OF THE
6 RECOVERY.

7 (D) IF A MONEY JUDGMENT IS AWARDED TO THE ATTORNEY'S CLIENT
8 AND THE MONEY JUDGMENT IS APPEALED, THE AMOUNT ALLOWED UNDER
9 SUBSECTION (2)(C).

10 (3) THE FEE ALLOWED IN SUBSECTION (2) SHALL BE COMPUTED ON
11 THE NET SUM OF THE RECOVERY AFTER DEDUCTING FROM THE RECOVERY THE
12 PROPERLY CHARGEABLE DISBURSEMENTS. IN COMPUTING THE FEE, THE
13 COSTS AS TAXED BY THE COURT OR THE MEDICAL LIABILITY DETERMINA-
14 TION BOARD AND ANY INTEREST INCLUDED IN OR ALLOWED ON A MONEY
15 JUDGMENT BEFORE AN APPEAL IS FILED, IF AN APPEAL IS FILED, IS
16 PART OF THE AMOUNT OF THE MONEY JUDGMENT. IN THE CASE OF A
17 RECOVERY PAYABLE IN INSTALLMENTS, THE FEE IS COMPUTED USING THE
18 PRESENT VALUE OF THE FUTURE PAYMENTS.

19 (4) CONTINGENCY FEE AGREEMENTS MADE BY AN ATTORNEY WITH A
20 CLIENT SHALL BE IN WRITING AND A COPY SHALL BE PROVIDED TO THE
21 CLIENT.

22 (5) AN ATTORNEY WHO ENTERS INTO A CONTINGENCY FEE AGREEMENT
23 THAT VIOLATES SUBSECTION (2) IS BARRED FROM RECOVERING A FEE IN
24 EXCESS OF THE MAXIMUM FEE SPECIFIED IN SUBSECTION (2), BUT THE
25 OTHER PROVISIONS OF THE CONTINGENCY FEE AGREEMENT REMAIN
26 ENFORCEABLE.

1 Sec. 1483. (1) In an action for damages alleging medical
2 malpractice against a person or party specified in section 5838a
3 AND IN A CLAIM UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION
4 ACT, damages for noneconomic loss ~~which exceeds~~ THAT EXCEED
5 \$225,000.00 shall not be awarded unless 1 or more of the follow-
6 ing circumstances exist:

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

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

9 (B) ~~(c)~~ A foreign object was wrongfully left in the body
10 of the patient.

11 ~~(d) The injury involves the reproductive system of the~~
12 ~~patient.~~

13 (C) ~~(e)~~ The discovery of the existence of the claim was
14 prevented by the fraudulent conduct of a health care provider.

15 (D) ~~(f)~~ A limb or organ of the patient was wrongfully
16 removed.

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

18 (2) IN AN ACTION FOR DAMAGES ALLEGING MEDICAL MALPRACTICE
19 AGAINST A PERSON OR PARTY SPECIFIED IN SECTION 5838A AND IN A
20 CLAIM UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT,
21 DAMAGES FOR ECONOMIC LOSS THAT EXCEED \$1,500,000.00 SHALL NOT BE
22 AWARDED.

23 (3) ~~(2)~~ In awarding damages in an action alleging medical
24 malpractice, the trier of fact shall itemize damages into DAMAGES
25 FOR economic LOSS and ~~noneconomic~~ damages FOR NONECONOMIC
26 LOSS.

1 (4) ~~-(3)-~~ "Noneconomic" AS USED IN THIS SECTION:

2 (A) "ECONOMIC LOSS" INCLUDES, BUT IS NOT LIMITED TO, LOSS OF
3 EARNINGS, LOSS OF EARNING CAPACITY, THE EXPENSE OF MEDICAL CARE,
4 AND THE EXPENSE OF REHABILITATION SERVICES.

5 (B) "NONECONOMIC loss" ~~-means-~~ INCLUDES, BUT IS NOT LIMITED
6 TO, damages or loss due to pain, suffering, inconvenience, physi-
7 cal impairment, OR physical disfigurement. ~~-, or other noneco-~~
8 ~~nomic loss.-~~

9 (5) ~~-(4)-~~ The STATE TREASURER SHALL ADJUST THE limitation on
10 ~~-noneconomic-~~ damages FOR NONECONOMIC LOSS set forth in subsec-
11 tion (1) ~~-shall be increased-~~ AND THE LIMITATION ON DAMAGES FOR
12 ECONOMIC LOSS SET FORTH IN SUBSECTION (2) by an amount determined
13 by the state treasurer at the end of each calendar year to
14 reflect the cumulative annual percentage ~~-increase-~~ CHANGE in the
15 consumer price index. As used in this subsection, "consumer
16 price index" means the most comprehensive index of consumer
17 prices available for this state from the bureau of labor statis-
18 tics of the United States department of labor.

19 Sec. 2169. (1) In an action alleging medical malpractice OR
20 IN A CLAIM FILED UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINA-
21 TION ACT, ~~-if the defendant is a specialist,-~~ a person shall not
22 give expert testimony on the appropriate standard of care unless
23 the person is ~~-or was a physician-~~ licensed ~~-to practice medicine~~
24 ~~or osteopathic medicine and surgery or a dentist licensed to~~
25 ~~practice dentistry-~~ AS A HEALTH PROFESSIONAL in this STATE or
26 ~~-another-~~ A state WITH A BORDER CONTIGUOUS WITH THIS STATE and
27 meets ~~-both of-~~ the following criteria:

1 (a) ~~Specializes, or specialized~~ IF THE DEFENDANT IS A
 2 SPECIALIST, SPECIALIZES at the time of the occurrence ~~which~~
 3 THAT is the basis for the action ~~,~~ in the same specialty or a
 4 related, relevant area of ~~medicine or osteopathic medicine and~~
 5 ~~surgery or dentistry~~ PRACTICE as the specialist who is the
 6 defendant in the medical malpractice action.

7 (b) ~~Devotes, or devoted at the time~~ DURING THE YEAR IMME-
 8 DIATELY PRECEDING THE DATE of the occurrence ~~which~~ THAT is the
 9 basis for the action, ~~a substantial portion~~ DEVOTED NOT LESS
 10 THAN 80% of his or her professional time to 1 OF the FOLLOWING:

11 (i) THE active clinical practice of ~~medicine or osteopathic~~
 12 ~~medicine and surgery or the active clinical practice of dentis-~~
 13 ~~try, or to~~ the SAME HEALTH PROFESSION IN WHICH THE DEFENDANT IS
 14 LICENSED OR, IF THE DEFENDANT IS A SPECIALIST, THE ACTIVE CLINI-
 15 CAL PRACTICE OF THAT SPECIALTY OR A RELATED, RELEVANT AREA OF
 16 PRACTICE.

17 (ii) THE instruction of students in an accredited ~~medical~~
 18 ~~school, osteopathic medical school, or dental~~ HEALTH
 19 PROFESSIONAL school IN THE SAME HEALTH PROFESSION IN WHICH THE
 20 DEFENDANT IS LICENSED OR, IF THE DEFENDANT IS A SPECIALIST, AN
 21 ACCREDITED HEALTH PROFESSIONAL SCHOOL in the same specialty or a
 22 related, relevant area of ~~health care as the specialist who is~~
 23 ~~the defendant in the medical malpractice action~~ PRACTICE.

24 (2) In determining the qualifications of an expert witness
 25 in an action alleging medical malpractice OR A COMPLAINT FILED
 26 UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT, the court

1 OR THE MEDICAL LIABILITY DETERMINATION BOARD OR A PANEL APPOINTED
2 BY THE BOARD shall, at a minimum, evaluate all of the following:

3 (a) The educational and professional training of the expert
4 witness.

5 (b) The area of specialization of the expert witness.

6 (c) The length of time the expert witness has been engaged
7 in the active clinical practice or instruction of ~~medicine,~~
8 ~~osteopathic medicine and surgery, or dentistry~~ THE HEALTH PRO-
9 FESSION OR A RELATED, RELEVANT AREA OF PRACTICE.

10 (d) The relevancy of the expert witness's testimony.

11 (3) This section does not limit the power of the trial court
12 OR THE MEDICAL LIABILITY DETERMINATION BOARD to disqualify an
13 expert witness on grounds other than the qualifications set forth
14 in this section.

15 (4) In an action alleging medical malpractice OR IN A CLAIM
16 FILED UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT, an
17 expert witness shall not testify on a contingency fee basis. A
18 person who violates this subsection is guilty of a misdemeanor.

19 ~~(5) As used in this section:~~

20 ~~(a) "Practice of dentistry" means the practice of dentistry~~
21 ~~as defined in section 16601 of the public health code, Act~~
22 ~~No. 368 of the Public Acts of 1978, being section 333.16601 of~~
23 ~~the Michigan Compiled Laws.~~

24 ~~(b) "Practice of medicine" means the practice of medicine as~~
25 ~~defined in section 17001 of the public health code, Act No. 368~~
26 ~~of the Public Acts of 1978, being section 333.17001 of the~~
27 ~~Michigan Compiled Laws.~~

1 ~~(c) "Practice of osteopathic medicine and surgery" means the~~
2 ~~practice of osteopathic medicine and surgery as defined in sec-~~
3 ~~tion 17501 of the public health code, being section 333.17501 of~~
4 ~~the Michigan Compiled Laws.~~

5 Sec. 2912. (1) ~~A~~ SUBJECT TO SUBSECTION (3), A PERSON MAY
6 MAINTAIN A civil action for malpractice AND IN A CLAIM FILED
7 UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT, ~~may be~~
8 ~~maintained~~ against any person professing or holding himself OR
9 HERSELF out to be a member of a state licensed profession. The
10 rules of the common law applicable to actions against members of
11 a state licensed profession ~~—~~ for malpractice ~~—~~ are applica-
12 ble against any person who holds himself OR HERSELF out to be a
13 member of a state licensed profession.

14 (2) Malpractice may be given in evidence in defense to any
15 action for services rendered by ~~the~~ A member of a state
16 licensed profession ~~—~~ or A person holding himself OR HERSELF
17 out to be a member of a state licensed profession.

18 (3) A PERSON WHO HAS FILED AN ACTION FOR MEDICAL MALPRACTICE
19 UNDER SUBSECTION (1) IS BARRED FROM FILING A COMPLAINT WITH THE
20 MEDICAL LIABILITY DETERMINATION BOARD RELATING TO THE SAME INCI-
21 DENT OR TREATMENT RELATED INJURY OR BASED ON FACTS ALLEGED IN THE
22 ACTION FOR MEDICAL MALPRACTICE FILED UNDER SUBSECTION (1). AS
23 USED IN THIS SUBSECTION:

24 (A) "MEDICAL LIABILITY DETERMINATION BOARD" MEANS THE MEDI-
25 CAL LIABILITY DETERMINATION BOARD CREATED BY THE MICHIGAN MEDICAL
26 LIABILITY DETERMINATION ACT.

1 (B) "TREATMENT RELATED INJURY" MEANS THAT TERM AS DEFINED IN
2 SECTION 2 OF THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT.

3 Sec. 2912a. (1) ~~In~~ SUBJECT TO SUBSECTION (2), IN an
4 action alleging malpractice AND IN A CLAIM FILED UNDER THE
5 MICHIGAN MEDICAL LIABILITY DETERMINATION ACT, the plaintiff
6 ~~shall have~~ HAS the burden of proving that in light of the state
7 of the art existing at the time of the alleged malpractice:

8 (a) The defendant, if a general practitioner, failed to pro-
9 vide the plaintiff the recognized standard of acceptable profes-
10 sional practice in the community in which the defendant practices
11 or in a similar community, and that as a proximate result of the
12 defendant failing to provide that standard, the plaintiff suf-
13 fered an injury.

14 (b) The defendant, if a specialist, failed to provide the
15 recognized standard of care within that specialty as reasonably
16 applied in light of the facilities available in the community or
17 other facilities reasonably available under the circumstances,
18 and as a proximate result of the defendant failing to provide
19 that standard, the plaintiff suffered an injury.

20 (2) IN AN ACTION ALLEGING MEDICAL MALPRACTICE OR IN A CLAIM
21 FILED UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT,
22 WHETHER THE PLAINTIFF SEEKS TO RECOVER DAMAGES FOR PERSONAL
23 INJURY OR FOR WRONGFUL DEATH, IN PROVING THAT HE OR SHE SUFFERED
24 AN INJURY AS A PROXIMATE RESULT OF THE DEFENDANT'S FAILURE TO
25 PROVIDE THE STANDARD DESCRIBED IN SUBSECTION (1)(A) OR (B), THE
26 PLAINTIFF HAS THE BURDEN OF PROVING THAT THE INJURY WAS MORE
27 PROBABLY THAN NOT CAUSED BY THE DEFENDANT'S NEGLIGENCE AND WOULD

1 NOT HAVE OCCURRED BUT FOR THE DEFENDANT'S NEGLIGENCE. IF THE
2 PLAINTIFF FAILS TO MEET THE BURDEN OF PROOF REQUIRED UNDER THIS
3 SUBSECTION, THE PLAINTIFF CANNOT RECOVER FOR LOSS OF AN OPPORTU-
4 NITY TO SURVIVE.

5 SEC. 2912F. (1) A PERSON SHALL NOT COMMENCE AN ACTION UNDER
6 SECTION 2912 OR FILE A COMPLAINT UNDER THE MICHIGAN MEDICAL
7 LIABILITY DETERMINATION ACT AGAINST A HEALTH PROFESSIONAL OR
8 HEALTH FACILITY UNLESS THE PERSON HAS GIVEN THE HEALTH PROFES-
9 SIONAL OR HEALTH FACILITY NOTICE UNDER THIS SECTION NOT LESS THAN
10 180 DAYS BEFORE THE ACTION IS COMMENCED.

11 (2) THE NOTICE REQUIRED UNDER SUBSECTION (1) DOES NOT HAVE
12 TO BE IN A PARTICULAR FORM, BUT SHALL NOTIFY THE HEALTH PROFES-
13 SIONAL OR HEALTH FACILITY OF THE LEGAL BASIS FOR THE CLAIM, THE
14 TYPE OF LOSS SUSTAINED, AND THE SPECIFIC NATURE OF THE INJURIES
15 SUFFERED. THE PERSON MAY SERVE THE NOTICE IN THE SAME MANNER IN
16 WHICH PROCESS IS SERVED UNDER CHAPTER 19.

17 (3) IF THE NOTICE REQUIRED UNDER THIS SECTION IS SERVED
18 WITHIN 180 DAYS BEFORE THE CLAIM WOULD BE BARRED UNDER
19 SECTION 5838A, THE PERIOD OF LIMITATION SET FORTH IN
20 SECTION 5838A IS EXTENDED FOR 180 DAYS.

21 Sec. 5805. (1) A person shall not bring or maintain an
22 action OR FILE A COMPLAINT UNDER THE MICHIGAN MEDICAL LIABILITY
23 DETERMINATION ACT to recover damages for injuries to persons or
24 property unless, after the claim first accrued to the plaintiff
25 or to someone through whom the plaintiff claims, the action OR
26 THE COMPLAINT is commenced within the periods of time prescribed
27 by this section.

1 (2) The period of limitations is 2 years for an action
2 charging assault, battery, or false imprisonment.

3 (3) The period of limitations is 2 years for an action
4 charging malicious prosecution.

5 (4) Except as otherwise provided in this chapter, the period
6 of limitations is 2 years for an action charging malpractice OR
7 FOR A COMPLAINT FILED UNDER THE MICHIGAN MEDICAL LIABILITY DETER-
8 MINATION ACT.

9 (5) The period of limitations is 2 years for an action
10 against a sheriff charging misconduct or neglect of office by the
11 sheriff or the sheriff's deputies.

12 (6) The period of limitations is 2 years after the expira-
13 tion of the year for which a constable was elected for actions
14 based on the constable's negligence or misconduct as constable.

15 (7) The period of limitations is 1 year for an action charg-
16 ing libel or slander.

17 (8) The period of limitations is 3 years after the time of
18 the death or injury for all other actions to recover damages for
19 the death of a person, or for injury to a person or property.

20 (9) The period of limitations is 3 years for a products
21 liability action. However, in the case of a product which has
22 been in use for not less than 10 years, the plaintiff, in proving
23 a prima facie case, shall be required to do so without benefit of
24 any presumption.

25 (10) The period of limitations for an action against a state
26 licensed architect, professional engineer, land surveyor, or

1 contractor based on an improvement to real property shall be as
2 provided in section 5839.

3 Sec. 5838a. (1) ~~—A—~~ FOR PURPOSES OF THIS ACT AND THE
4 MICHIGAN MEDICAL LIABILITY DETERMINATION ACT, A claim based on
5 the medical malpractice of a person who is ~~—~~ or who holds him-
6 self or herself out to be ~~—~~ a licensed health care profession-
7 al, licensed health facility or agency, employee or agent of a
8 licensed health facility or agency who is engaging in or other-
9 wise assisting in medical care and treatment, or any other health
10 care professional, whether or not licensed by the state, accrues
11 at the time of the act or omission ~~—which—~~ THAT is the basis for
12 the claim of medical malpractice, regardless of the time the
13 plaintiff discovers or otherwise has knowledge of the claim. As
14 used in this subsection:

15 (a) "Licensed health facility or agency" means a health
16 facility or agency licensed under article 17 of the ~~—Public—~~
17 PUBLIC health code, Act No. 368 of the Public Acts of 1978, being
18 sections 333.20101 to 333.22181 of the Michigan Compiled Laws.

19 (b) "Licensed health care professional" means an individual
20 licensed under article 15 of the public health code, Act No. 368
21 of the Public Acts of 1978, being sections 333.16101 to 333.18838
22 of the Michigan Compiled Laws. Licensed health care professional
23 does not include a sanitarian or a veterinarian.

24 (2) Except as otherwise provided in this subsection AND
25 SECTION 2912F, an action involving a claim based on medical mal-
26 practice OR A CLAIM UNDER THE MICHIGAN MEDICAL LIABILITY
27 DETERMINATION ACT may be commenced at any time within the

1 applicable period prescribed in sections 5805 or 5851 to 5856, or
 2 within 6 months after the plaintiff discovers or should have dis-
 3 covered the existence of the claim, whichever is later. However,
 4 the claim shall not be commenced later than ~~-6-~~ 4 years after the
 5 date of the act or omission ~~-which-~~ THAT is the basis for the
 6 claim. The burden of proving that the plaintiff, as a result of
 7 physical discomfort, appearance, condition, or otherwise, neither
 8 discovered nor should have discovered the existence of the claim
 9 at least 6 months before the expiration of the period otherwise
 10 applicable to the claim ~~-shall be-~~ IS on the plaintiff. A medi-
 11 cal malpractice action ~~-which-~~ OR A CLAIM UNDER THE MICHIGAN MED-
 12 ICAL LIABILITY DETERMINATION ACT THAT is not commenced within the
 13 time prescribed by this subsection is barred. This subsection
 14 ~~-shall-~~ DOES not apply, and the plaintiff ~~-shall be-~~ IS subject
 15 to the period of limitations set forth in subsection (3), ~~-under~~
 16 ~~1 or more of the following circumstances: (a) If~~ IF discovery
 17 of the existence of the claim was prevented by the fraudulent
 18 conduct of a health care provider.

19 ~~(b) If a foreign object was wrongfully left in the body of~~
 20 ~~the patient.~~

21 ~~(c) If the injury involves the reproductive system of the~~
 22 ~~plaintiff.~~

23 (3) An action involving a claim based on medical malpractice
 24 OR A CLAIM UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT
 25 under ~~the~~ circumstances ~~described in subsection (2)(a) to (c)~~
 26 THAT THE DISCOVERY OF THE CLAIM WAS PREVENTED BY THE FRAUDULENT
 27 CONDUCT OF A HEALTH CARE PROVIDER may be commenced at any time

1 within the applicable period prescribed in sections 5805 or 5851
2 to 5856, or within 6 months after the plaintiff discovers or
3 should have discovered the existence of the claim, whichever is
4 later. The burden of proving that the plaintiff, as a result of
5 physical discomfort, appearance, condition or otherwise, neither
6 discovered nor should have discovered the existence of the claim
7 at least 6 months before the expiration of the period otherwise
8 applicable to the claim ~~shall be~~ IS on the plaintiff. A medi-
9 cal malpractice action ~~which~~ OR A CLAIM UNDER THE MICHIGAN MED-
10 ICAL LIABILITY DETERMINATION ACT THAT is not commenced within the
11 time prescribed by this subsection is barred.

12 Sec. 5851. (1) Except as otherwise provided in ~~subsection~~
13 SUBSECTIONS (7) AND (8), if the person first entitled to make an
14 entry or bring an action UNDER THIS ACT OR FILE A COMPLAINT UNDER
15 THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT is under 18
16 years of age, insane, or imprisoned at the time the claim
17 accrues, the person or those claiming under the person ~~shall~~
18 ~~have~~ HAS 1 year after the disability is removed through death or
19 otherwise, to make the entry or bring the action although the
20 period of limitations has run. This section does not lessen the
21 time provided for in section 5852.

22 (2) The term insane as employed in this chapter means a con-
23 dition of mental derangement such as to prevent the sufferer from
24 comprehending rights he or she is otherwise bound to know and is
25 not dependent on whether or not the person has been judicially
26 declared to be insane.

1 (3) To be ~~deemed~~ CONSIDERED a disability, the infancy,
2 insanity, or imprisonment must exist at the time the claim
3 accrues. If the disability comes into existence after the claim
4 has accrued, A COURT OR THE MEDICAL LIABILITY DETERMINATION BOARD
5 SHALL NOT RECOGNIZE the disability ~~shall not be recognized~~
6 under this section for the purpose of modifying the period of
7 limitations.

8 (4) ~~Successive disabilities shall not be tacked. That is,~~
9 A PERSON SHALL NOT TACK SUCCESSIVE DISABILITIES. A COURT OR THE
10 MEDICAL LIABILITY DETERMINATION BOARD SHALL RECOGNIZE only those
11 disabilities ~~which~~ THAT exist at the time the claim first
12 accrues and ~~which~~ THAT disable the person to whom the claim
13 first accrues ~~shall be recognized under this section~~ for the
14 purpose of modifying the period of limitations.

15 (5) ~~All~~ A COURT OR THE MEDICAL LIABILITY DETERMINATION
16 BOARD SHALL RECOGNIZE ALL of the disabilities of infancy, insani-
17 ty, and imprisonment ~~which~~ THAT disable the person to whom the
18 claim first accrues at the time the claim first accrues. ~~shall~~
19 ~~be recognized. That is,~~ A COURT SHALL COUNT the year of grace
20 provided in this section ~~shall be counted~~ from the termination
21 of the last disability to the person to whom the claim originally
22 accrued ~~which~~ THAT has continued from the time the claim
23 accrued, whether this disability terminates because of the death
24 of the person disabled or for some other reason.

25 (6) With respect to a claim accruing before the effective
26 date of the age of majority act of 1971, Act No. 79 of the Public
27 Acts of 1971, being sections 722.51 to 722.55 of the Michigan

1 Compiled Laws, THE disability of infancy ~~shall be considered~~ IS
2 removed as of the effective date of Act No. 79 of the Public Acts
3 of 1971, as to persons who were at least 18 years of age but less
4 than 21 years of age on January 1, 1972, and ~~shall be~~
5 ~~considered~~ IS removed as of the eighteenth birthday of a person
6 who was under 18 years of age on January 1, 1972.

7 (7) If ~~—~~ at the time a claim alleging medical malpractice
8 accrues to a person under section 5838a ~~—~~ the person is ~~—13—~~ 8
9 years of age or less, A PERSON SHALL NOT BRING an action based on
10 the claim ~~shall not be brought~~ OR FILE A COMPLAINT UNDER THE
11 MICHIGAN MEDICAL LIABILITY DETERMINATION ACT unless the action is
12 commenced OR THE COMPLAINT FILED on or before the person's
13 ~~fifteenth~~ TENTH birthday. If ~~—~~ at the time a claim alleging
14 medical malpractice accrues to a person under section 5838a ~~—~~
15 the person is more than ~~—13—~~ 8 years of age, he or she ~~shall be~~
16 IS subject to the period of limitations set forth in
17 section 5838a.

18 (8) IF AT THE TIME A CLAIM ALLEGING MEDICAL MALPRACTICE
19 ACCRUES TO A PERSON UNDER SECTION 5838A THE PERSON IS UNDER THE
20 DISABILITY OF INSANITY, THE GRACE PERIOD UNDER SUBSECTION (1)
21 DOES NOT APPLY IF A LEGAL GUARDIAN IS APPOINTED FOR THE PERSON
22 WITH SUFFICIENT AUTHORITY TO BRING AN ACTION UNDER THIS ACT OR
23 FILE A COMPLAINT UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINA-
24 TION ACT. THE GRACE PERIOD UNDER SUBSECTION (1) DOES NOT APPLY
25 TO A PERSON UNDER THE DISABILITY OF INSANITY OR IMPRISONMENT
26 AFTER THE EXPIRATION OF THE MAXIMUM 4-YEAR TIME PERIOD SET FORTH
27 IN SECTION 5838A(2), UNLESS DISCOVERY OF THE EXISTENCE OF THE

1 CLAIM WAS PREVENTED BY THE FRAUDULENT CONDUCT OF A HEALTH CARE
2 PROVIDER, AS PROVIDED IN SECTION 5838A(2).

3 Sec. 6013. (1) Interest shall be allowed on a money judgment
4 recovered in a civil action OR IN A CLAIM FILED UNDER THE
5 MICHIGAN MEDICAL LIABILITY DETERMINATION ACT, as provided in this
6 section. ~~—except that~~ HOWEVER, for complaints filed UNDER
7 THIS ACT on or after October 1, 1986, AND FOR CLAIMS FILED UNDER
8 THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT, interest shall
9 not be allowed on future damages from the date of filing the com-
10 plaint to the date of entry of the judgment OR FINAL DECISION.
11 As used in this subsection, "future damages" means that term as
12 defined in section 6301.

13 (2) For complaints filed before June 1, 1980, in an action
14 involving other than a written instrument having a rate of inter-
15 est exceeding 6% per year, the interest on the judgment shall be
16 calculated from the date of filing the complaint to June 1, 1980,
17 at the rate of 6% per year and on and after June 1, 1980, to the
18 date of satisfaction of the judgment at the rate of 12% per year
19 compounded annually.

20 (3) For complaints filed before June 1, 1980, in an action
21 involving a written instrument having a rate of interest exceed-
22 ing 6% per year, the interest on the judgment shall be calculated
23 from the date of filing the complaint to the date of satisfaction
24 of the judgment at the rate specified in the instrument if the
25 rate was legal at the time the instrument was executed. However,
26 the rate after the date judgment is entered shall not exceed the
27 following:

1 (a) Seven percent per year compounded annually for any
2 period of time between the date judgment is entered and the date
3 of satisfaction of the judgment ~~which~~ THAT elapses before June
4 1, 1980.

5 (b) Thirteen percent per year compounded annually for any
6 period of time between the date judgment is entered and the date
7 of satisfaction of the judgment ~~which~~ THAT elapses after May
8 31, 1980.

9 (4) For complaints filed on or after June 1, 1980, but
10 before January 1, 1987, interest shall be calculated from the
11 date of filing the complaint to the date of satisfaction of the
12 judgment at the rate of 12% per year compounded annually unless
13 the judgment is rendered on a written instrument having a higher
14 rate of interest. In that case interest shall be calculated at
15 the rate specified in the instrument if the rate was legal at the
16 time the instrument was executed. The rate shall not exceed 13%
17 per year compounded annually after the date judgment is entered.

18 (5) For complaints filed on or after January 1, 1987, if a
19 judgment is rendered on a written instrument, interest shall be
20 calculated from the date of filing the complaint to the date of
21 satisfaction of the judgment at the rate of 12% per year com-
22 pounded annually, unless the instrument has a higher rate of
23 interest. In that case interest shall be calculated at the rate
24 specified in the instrument if the rate was legal at the time the
25 instrument was executed. The rate shall not exceed 13% per year
26 compounded annually after the date judgment is entered.

1 (6) Except as otherwise provided in subsection (5) AND
2 SUBJECT TO SUBSECTION (9), for complaints filed on or after
3 January 1, 1987, interest on a money judgment recovered in a
4 civil action UNDER THIS ACT OR A CLAIM UNDER THE MICHIGAN MEDICAL
5 LIABILITY DETERMINATION ACT shall be calculated at 6-month inter-
6 vals from the date of filing the complaint at a rate of interest
7 which is equal to 1% plus the average interest rate paid at auc-
8 tions of 5-year United States treasury notes during the 6 months
9 immediately preceding July 1 and January 1, as certified by the
10 state treasurer, and compounded annually, pursuant to this
11 section. INTEREST UNDER THIS SUBSECTION SHALL BE CALCULATED ONLY
12 ON THE AMOUNT OF THE MONEY JUDGMENT ACTUALLY TO BE RECEIVED BY
13 THE PLAINTIFF, EXCLUDING ATTORNEY FEES AND OTHER COSTS.

14 (7) If a bona fide, reasonable written offer of settlement
15 in a civil action based on tort OR A CLAIM UNDER THE MICHIGAN
16 MEDICAL LIABILITY DETERMINATION ACT is made by the party against
17 whom the judgment is subsequently rendered AND REJECTED BY THE
18 PLAINTIFF, the court OR THE MEDICAL LIABILITY DETERMINATION BOARD
19 shall order that interest ~~shall~~ not be allowed beyond the date
20 the BONA FIDE, REASONABLE written offer of settlement ~~which is~~
21 ~~made and rejected by the plaintiff, and~~ is filed with the court
22 OR THE MEDICAL LIABILITY DETERMINATION BOARD.

23 (8) Except as otherwise provided in subsection (1), if a
24 bona fide, reasonable written offer of settlement in a civil
25 action based on tort OR A CLAIM UNDER THE MICHIGAN MEDICAL
26 LIABILITY DETERMINATION ACT is not made by the party against whom
27 the judgment is subsequently rendered, or is made and ~~that~~

1 ~~offer~~ is not filed with the court OR THE MEDICAL LIABILITY
2 DETERMINATION BOARD, the court OR THE MEDICAL LIABILITY DETERMI-
3 NATION BOARD shall order that interest be calculated from the
4 date of filing the complaint to the date of satisfaction of the
5 judgment.

6 (9) Except as otherwise provided in subsection (1), if a
7 bona fide, reasonable written offer of settlement in a civil
8 action based on tort OR A CLAIM UNDER THE MICHIGAN MEDICAL
9 LIABILITY DETERMINATION ACT is made by a plaintiff for whom the
10 judgment is subsequently rendered and that offer is rejected and
11 the offer is filed with the court OR THE MEDICAL LIABILITY DETER-
12 MINATION BOARD, the court OR THE MEDICAL LIABILITY DETERMINATION
13 BOARD shall order that interest be calculated from the date of
14 the rejection of the offer to the date of satisfaction of the
15 judgment at a rate of interest equal to 2% plus the rate of
16 interest computed under subsection (6).

17 (10) ~~An~~ A BONA FIDE, REASONABLE WRITTEN offer OF
18 SETTLEMENT made pursuant to this section ~~which~~ THAT is not
19 accepted within 21 days after the offer is made ~~shall be~~
20 ~~considered~~ IS rejected. A rejection ~~—~~ under this subsection
21 or otherwise ~~—~~ does not preclude a later offer by either
22 party.

23 (11) As used in this section:

24 (a) "Bona fide, reasonable written offer of settlement"
25 means:

26 (i) With respect to an offer of settlement made by a
27 defendant against whom judgment is subsequently rendered, ~~an~~ A

1 WRITTEN offer of settlement that is not less than 90% of the
2 amount actually received by the plaintiff in the action through
3 judgment OR FINAL DECISION UNDER THE MICHIGAN MEDICAL LIABILITY
4 DETERMINATION ACT.

5 (ii) With respect to an offer of settlement made by a plain-
6 tiff, ~~an~~ A WRITTEN offer of settlement that is not more than
7 110% of the amount actually received by the plaintiff in the
8 action through judgment OR FINAL DECISION UNDER THE MICHIGAN MED-
9 ICAL LIABILITY DETERMINATION ACT.

10 (b) "Defendant" means a defendant, a counter-defendant, or a
11 cross-defendant.

12 (c) "Party" means a plaintiff or a defendant.

13 (d) "Plaintiff" means a plaintiff, a counter-plaintiff, or a
14 cross-plaintiff.

15 Sec. 6098. (1) A judge presiding over an action alleging
16 medical malpractice AND THE MEDICAL LIABILITY DETERMINATION BOARD
17 IN A CLAIM UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT
18 shall review each verdict OR FINAL DECISION to determine if the
19 limitation on noneconomic damages OR THE LIMITATION ON ECONOMIC
20 DAMAGES, OR BOTH, provided for in section 1483 applies. If ~~the~~
21 A limitation applies, the court OR THE MEDICAL LIABILITY DETERMI-
22 NATION BOARD shall set aside any amount of noneconomic damages in
23 excess of the amount specified in section 1483.

24 (2) A judge presiding over a personal injury action shall
25 review each verdict returned by the jury and shall do 1 of the
26 following:

1 (a) Concur with the award.

2 (b) Upon motion by any party, within 21 days of entry of the
3 judgment of the court, grant a new trial to all or some of the
4 parties, on all or some issues, whenever their substantial rights
5 are materially affected, for any of the following reasons:

6 (i) Irregularity in the proceedings of the court, jury, or
7 prevailing party.

8 (ii) An order of the court or abuse of discretion which
9 denied the moving party a fair trial.

10 (iii) Misconduct of the jury or the prevailing party.

11 (iv) Excessive or inadequate damages appearing to have been
12 influenced by passion or prejudice.

13 (v) A verdict clearly or grossly inadequate or excessive.

14 (vi) A verdict or decision against the great weight of the
15 evidence or contrary to law.

16 (vii) Material evidence, newly discovered, which could not
17 with reasonable diligence have been discovered and produced at
18 trial.

19 (viii) Error of law occurring in the proceedings or mistake
20 of fact by the court.

21 (ix) Other grounds as may be provided for by court rule.

22 (c) Within 21 days after entry of a judgment, the court on
23 its own initiative may order a new trial for any of the reasons
24 set forth in subdivision (b). The order shall specify the
25 grounds on which the order is based.

26 (d) If the court finds that the only error in the trial is
27 the inadequacy or excessiveness of the verdict, the court may

1 grant a new trial unless, within 14 days, the nonmoving party
2 consents in writing to the entry of judgment in an amount found
3 by the court to be the lowest or highest amount the evidence will
4 support.

5 (3) If the moving party appeals, the written consent entered
6 under subsection (2)(d) in no way prejudices the nonmoving
7 party's argument on appeal that the original verdict was
8 correct. If the nonmoving party prevails on appeal, the original
9 verdict may be reinstated by the appellate court.

10 (4) All orders and judgments of the circuit court granting
11 additur or remittitur shall be affirmed on appeal unless the
12 trial judge committed an abuse of discretion.

13 Sec. 6301. As used in this chapter:

14 (a) "Future damages" means damages arising from personal
15 injury which the trier of fact finds will accrue after the damage
16 findings are made and includes damages for medical treatment,
17 care and custody, loss of earnings, loss of earning capacity,
18 loss of bodily function, and pain and suffering.

19 (B) "MEDICAL LIABILITY DETERMINATION BOARD" MEANS THE MEDI-
20 CAL LIABILITY DETERMINATION BOARD ESTABLISHED IN SECTION 4 OF THE
21 MICHIGAN MEDICAL LIABILITY DETERMINATION ACT.

22 (C) ~~-(b)-~~ "Personal injury" means bodily harm, sickness,
23 disease, death, or emotional harm resulting from bodily harm.

24 Sec. 6303. (1) In a personal injury action OR IN A CLAIM
25 UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT in which
26 the plaintiff seeks to recover for the expense of medical care,
27 rehabilitation services, loss of earnings, loss of earning

1 capacity, or other economic loss, evidence to establish that the
2 expense or loss was paid or is payable, in whole or in part, by a
3 collateral source ~~shall be~~ IS admissible to the court in which
4 the action was brought OR TO THE MEDICAL LIABILITY DETERMINATION
5 BOARD after a verdict for the plaintiff and before a judgment is
6 entered on the verdict OR AFTER A FINAL DECISION OF THE MEDICAL
7 LIABILITY DETERMINATION BOARD. Subject to subsection (5), if the
8 court OR THE MEDICAL LIABILITY DETERMINATION BOARD determines
9 that all or part of the plaintiff's expense or loss has been paid
10 or is payable by a collateral source, the court OR THE MEDICAL
11 LIABILITY DETERMINATION BOARD shall reduce that portion of the
12 judgment ~~which~~ OR FINAL DECISION THAT represents damages paid
13 or payable by a collateral source by an amount equal to the sum
14 determined pursuant to subsection (2). ~~This~~ THE reduction
15 REQUIRED UNDER THIS SUBSECTION shall not exceed the amount of the
16 judgment OR FINAL DECISION OF THE MEDICAL LIABILITY DETERMINATION
17 BOARD for economic loss or that portion of the verdict ~~which~~ OR
18 FINAL DECISION THAT represents damages paid or payable by a col-
19 lateral source.

20 (2) The court OR THE MEDICAL LIABILITY DETERMINATION BOARD
21 shall determine the amount of the plaintiff's expense or loss
22 ~~which~~ DESCRIBED IN SUBSECTION (1) THAT has been paid or is pay-
23 able by a collateral source. Except for premiums on insurance
24 ~~which~~ THAT is required by law, THE COURT OR THE MEDICAL LIABIL-
25 ITY DETERMINATION BOARD SHALL REDUCE that amount ~~shall then be~~
26 ~~reduced~~ by a sum equal to the premiums, or that portion of the
27 premiums paid for the particular benefit by the plaintiff or the

1 plaintiff's family or incurred by the plaintiff's employer on
2 behalf of the plaintiff in securing the benefits received or
3 receivable from the collateral source.

4 (3) Within 10 days after a verdict IN AN ACTION FILED UNDER
5 THIS ACT OR A FINAL DECISION UNDER THE MICHIGAN MEDICAL LIABILITY
6 DETERMINATION ACT for the plaintiff, THE plaintiff's attorney
7 shall send notice of the verdict OR FINAL DECISION by registered
8 mail to ~~all persons~~ EACH PERSON entitled by contract to a lien
9 against the proceeds of plaintiff's recovery. If a contractual
10 lien holder does not exercise the lien holder's right of subroga-
11 tion within 20 days after receipt of the notice of the verdict OR
12 FINAL DECISION, the lien holder ~~shall lose~~ LOSES the right of
13 subrogation. This subsection ~~shall only apply~~ APPLIES ONLY to
14 contracts executed or renewed on or after the effective date of
15 this section.

16 (4) As used in this section, "collateral source" means bene-
17 fits received or receivable from an insurance policy; benefits
18 payable pursuant to a contract with a health care corporation,
19 dental care corporation, or health maintenance organization;
20 employee benefits; social security benefits; worker's compensa-
21 tion benefits; or medicare benefits. Collateral source does not
22 include life insurance benefits or benefits paid by a person,
23 partnership, association, corporation, or other legal entity
24 entitled by law to a lien against the proceeds of a recovery by a
25 plaintiff in a civil action for damages. Collateral source does
26 not include benefits paid or payable by a person, partnership,
27 association, corporation, or other legal entity entitled by

1 contract to a lien against the proceeds of a recovery by a
2 plaintiff in a civil action for damages, if the contractual lien
3 has been exercised pursuant to subsection (3).

4 (5) For purposes of this section, THE COURT OR THE MEDICAL
5 LIABILITY DETERMINATION BOARD SHALL NOT CONSIDER benefits from a
6 collateral source ~~shall not be considered~~ payable or receivable
7 unless the court OR MEDICAL LIABILITY DETERMINATION BOARD makes a
8 determination that there is a previously existing contractual or
9 statutory obligation on the part of the collateral source to pay
10 the benefits.

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

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

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

21 (2) IN A CLAIM FILED UNDER THE MICHIGAN MEDICAL LIABILITY
22 DETERMINATION ACT INVOLVING FAULT OF MORE THAN 1 PARTY TO THE
23 CLAIM, INCLUDING THIRD-PARTY DEFENDANTS, THE MEDICAL LIABILITY
24 DETERMINATION BOARD SHALL MAKE THE FINDINGS REQUIRED UNDER SUB-
25 SECTION (1) (A) AND (B), UNLESS OTHERWISE AGREED BY ALL PARTIES TO
26 THE CLAIM.

1 (3) ~~-(2)-~~ In determining the percentages of fault under
2 ~~subsection~~ SUBSECTIONS (1)(b) AND (2), the trier of fact shall
3 consider both the nature of the conduct of each party at fault
4 and the extent of the causal relation between the conduct and the
5 damages claimed.

6 (4) ~~-(3)-~~ If it is determined under subsections (1), ~~and~~
7 (2), AND (3) that a plaintiff is not at fault, subsections (5)
8 and (6) ~~shall~~ DO not apply.

9 (5) ~~-(4)-~~ Subsections ~~-(5) and (6) shall~~ (6) AND (7) DO not
10 apply to a products liability action, as defined in
11 section 2945.

12 (6) ~~-(5)-~~ The court shall determine the award of damages to
13 each plaintiff in accordance with the findings under subsection
14 (1), subject to any reduction under sections 2925d and 6303, and
15 enter judgment against each party, including a third-party
16 defendant, except that ~~judgment~~ THE COURT shall not ~~be~~
17 ~~entered~~ ENTER JUDGMENT against a person who has been released
18 from liability pursuant to section 2925d. THE MEDICAL LIABILITY
19 DETERMINATION BOARD SHALL DETERMINE THE AWARD OF DAMAGES TO EACH
20 PLAINTIFF IN ACCORDANCE WITH THE FINDINGS UNDER SUBSECTION (2),
21 SUBJECT TO ANY REDUCTION UNDER SECTIONS 2925D AND 6303, AND ENTER
22 AN ORDER AGAINST EACH PARTY, INCLUDING A THIRD-PARTY DEFENDANT,
23 EXCEPT THAT THE MEDICAL LIABILITY DETERMINATION BOARD SHALL NOT
24 ENTER AN ORDER AGAINST A PERSON WHO HAS BEEN RELEASED FROM
25 LIABILITY PURSUANT TO SECTION 2925D. Except as otherwise provided
26 in subsection ~~-(6)-~~ (7), a person shall not be required to pay

1 damages in an amount greater than his or her percentage of
2 fault.

3 (7) ~~—(6)—~~ Except as otherwise provided in this subsection
4 and subsection ~~—(7)—~~ (8), upon motion made not later than 6
5 months after a final judgment is entered OR A FINAL DECISION IS
6 MADE, the court OR THE MEDICAL LIABILITY DETERMINATION BOARD
7 shall determine whether all or part of a party's share of the
8 obligation is uncollectible from that party, and shall reallocate
9 any uncollectible amount among the other parties according to
10 their respective percentages of fault as determined under subsec-
11 tion (1) OR (2). A party shall not be required to pay a percen-
12 tage of any uncollectible amount ~~—which—~~ THAT exceeds that
13 party's percentage of fault as determined under subsection (1) OR
14 (2). The party whose liability is reallocated ~~—shall—continue—~~
15 CONTINUES to be subject to contribution and to any continuing
16 liability to the plaintiff on the judgment OR FINAL DECISION.

17 (8) ~~—(7)—~~ Notwithstanding subsection ~~—(3)—~~ (4), a governmen-
18 tal agency, other than a governmental hospital or medical care
19 facility, shall not be required to pay a percentage of any uncol-
20 lectible amount ~~—which—~~ THAT exceeds the governmental agency's
21 percentage of fault as determined under subsection (1).

22 Sec. 6305. (1) Any verdict or judgment rendered by a trier
23 of fact in a personal injury action OR A FINAL DECISION OF THE
24 MEDICAL LIABILITY DETERMINATION BOARD subject to this chapter
25 shall include specific findings ~~—of—~~ FOR ALL the following:

26 (a) Any past economic and noneconomic damages.

1 (b) Any future damages and the periods over which they will
2 accrue, on an annual basis, for each of the following types of
3 future damages:

4 (i) Medical and other costs of health care.

5 (ii) Lost wages or earnings or lost earning capacity and
6 other economic loss.

7 (iii) Noneconomic loss.

8 (2) The calculation of future damages for types of future
9 damages described in subsection (1)(b) shall be based on the
10 costs and losses during the period of time the plaintiff will
11 sustain those costs and losses. In the event of death, the cal-
12 culation of future damages shall be based on the losses during
13 the period of time the plaintiff would have lived but for the
14 injury upon which the claim is based.

15 Sec. 6306. (1) After a verdict rendered by a trier of fact
16 in favor of a plaintiff, an order of judgment shall be entered by
17 the court. IN A CLAIM UNDER THE MEDICAL LIABILITY DETERMINATION
18 ACT, IF THE MEDICAL LIABILITY DETERMINATION BOARD FINDS IN FAVOR
19 OF THE PLAINTIFF, THE MEDICAL LIABILITY DETERMINATION BOARD SHALL
20 ENTER AN ORDER THAT CONSTITUTES A FINAL DECISION. The order of
21 judgment OR ORDER CONSTITUTING A FINAL DECISION shall be entered
22 against each defendant, including a third-party defendant, in the
23 following order and in the following ~~judgment~~ amounts:

24 (a) All past economic damages, less collateral source pay-
25 ments as provided for in section 6303.

26 (b) All past noneconomic damages.

1 (c) All future economic damages, less medical and other
2 health care costs, and less collateral source payments determined
3 to be collectible under section 6303(5) reduced to gross present
4 cash value.

5 (d) All future medical and other health care costs reduced
6 to gross present cash value.

7 (e) All future noneconomic damages reduced to gross present
8 cash value.

9 (f) All taxable and allowable costs, including interest as
10 permitted by section 6013 or 6455 on the judgment OR ORDER
11 amounts.

12 (2) As used in this section, "gross present cash value"
13 means the total amount of future damages reduced to present value
14 at a rate of 5% per year for each year in which those damages
15 accrue, as found by the trier of fact pursuant to
16 section 6305(1)(b).

17 (3) If there is an individual who was released from liabil-
18 ity pursuant to section 2925d, the total judgment amount shall be
19 reduced, as provided in subsection (5), by an amount equal to the
20 amount of the settlement between the plaintiff and that
21 individual.

22 (4) If the plaintiff was assigned a percentage of fault pur-
23 suant to section 6304, the total judgment OR ORDER amount shall
24 be reduced, as provided in subsection (5), by an amount equal to
25 the percentage of plaintiff's fault.

26 (5) When reducing the judgment amount as provided in
27 subsections (3) and (4), the court OR THE MEDICAL LIABILITY

1 DETERMINATION BOARD shall determine the ratio of total past
2 damages to total future damages and shall allocate the amounts to
3 be deducted proportionally between the past and future damages.

4 Sec. 6307. In an action alleging personal injury OR IN A
5 CLAIM UNDER THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT, if
6 the amount of future damages IN THE JUDGMENT OR FINAL DECISION,
7 as described in section 6306(1)(c) and (e), ~~in the judgment~~
8 exceeds \$250,000.00 gross present cash value, as determined under
9 section 6306(2), the court OR THE MEDICAL LIABILITY DETERMINATION
10 BOARD shall enter an order that the defendant or the defendant's
11 liability insurance carrier ~~shall~~ satisfy that amount of the
12 judgment OR FINAL DECISION, less all costs and attorney fees the
13 plaintiff is obligated to pay, by the purchase of an annuity con-
14 tract ~~—~~ if all of the following requirements are met:

15 (a) The purchase price of the annuity contract ~~shall be~~ IS
16 equal to 100% of the future damages subject to this section, less
17 an amount determined by multiplying the amount of those damages
18 by a percentage equal to the rate of prejudgment interest as cal-
19 culated under section 6013(5) or section 6455(2) on the date the
20 trial OR HEARING was commenced.

21 (b) The annuity contract is purchased from a life insurer
22 authorized to issue annuity contracts under the insurance code of
23 1956, Act No. 218 of the Public Acts of 1956, being sections
24 500.100 to 500.8302 of the Michigan Compiled Laws.

25 Sec. 6309. (1) Subject to section 6307, if the plaintiff
26 and the defendant agree to a plan for the structured payment of
27 future damages within 35 days of the judgment IN A CIVIL ACTION

1 UNDER THIS ACT OR AN ORDER CONSTITUTING A FINAL DECISION UNDER
2 THE MICHIGAN MEDICAL LIABILITY DETERMINATION ACT, the court OR
3 THE MEDICAL LIABILITY DETERMINATION BOARD shall order that struc-
4 tured payments ~~shall~~ be made pursuant to that plan.

5 (2) If the plaintiff and defendant do not agree to a plan
6 for structured payments as ~~prescribed by~~ DESCRIBED IN
7 subsection (1), the court OR THE MEDICAL LIABILITY DETERMINATION
8 BOARD shall order the structured payment of future damages pursu-
9 ant to a plan submitted to the court by the plaintiff or
10 defendant.

11 (3) Upon motion by the plaintiff, the court OR THE MEDICAL
12 LIABILITY DETERMINATION BOARD shall make a determination as to
13 the future collectibility of ~~the~~ AN annuity contract REQUIRED
14 UNDER SECTION 6307 or a qualified assignment made pursuant to
15 subsection (4).

16 (4) The defendant or the defendant's liability insurance
17 carrier who satisfies a portion of the judgment by the purchase
18 of an annuity contract as provided by this section or
19 section 6307 ~~shall be~~ IS the owner of that annuity contract,
20 except that the defendant or the defendant's insurance carrier
21 may make a qualified assignment OF THE OBLIGATION, within the
22 meaning of section 130(c) of the internal revenue code of 1954,
23 as amended, ~~of the obligation~~ to the plaintiff.

24 (5) If a qualified assignment is made pursuant to subsection
25 (4), the defendant's liability insurance carrier ~~shall be~~ IS
26 relieved of all obligation to the plaintiff.

1 (6) Structured payments guaranteed by an annuity contract
2 shall be made to the plaintiff or the plaintiff's estate, or in a
3 wrongful death action ~~—~~ to the person or persons entitled to
4 the damages or that person's or persons' estate, as applicable.

5 Section 2. This amendatory act shall not take effect unless
6 Senate Bill No. 248

7 of the 86th Legislature is enacted into law.