



HOUSE BILL No. 5568

May 19 1994 Introduced by Reps Nye and Griffin and referred to the Committee on Judiciary

A bill to amend sections 1621 1627, 1629 1641 2925d, 2945, 2948, 5805, 6304, and 6306 of Act No 236 of the Public Acts of 1961 entitled as amended

Revised judicature act of 1961, sections 1621 and 1627 as amended and sections 1629 and 6306 as added 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 6304 as amended by Act No 78 of the Public Acts of 1993 being sections 600 1621, 600 1627 600 1629, 600 1641, 600 2925d, 600 2945 600 2948 600 5805 600 6304 and 600 6306 of the Michigan Compiled Laws to add sections 2955, 2956 2957, 2958 and 2959 and to repeal certain parts of the act

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 1621, 1627 1629 1641, 2925d 2945,
2 2948 5805, 6304 and 6306 of Act No 236 of the Public Acts of

1 1961 sections 1621 and 1627 as amended and sections 1629 and
 2 6306 as added by Act No 178 of the Public Acts of 1986 section
 3 5805 as amended by Act No 115 of the Public Acts of 1988, and
 4 section 6304 as amended by Act No 78 of the Public Acts of 1993,
 5 being sections 600 1621, 600 1627, 600 1629, 600 1641, 600 2925d
 6 600 2945 600 2948, 600 5805, 600 6304 and 600 6306 of the
 7 Michigan Compiled Laws, are amended and sections 2955 2956
 8 2957 2958 and 2959 are added to read as follows

9 Sec 1621 Except for actions provided for in sections
 10 1605, 1611 1615 and ~~1629(a) (b), and (c)~~ 1629, venue ~~shall~~
 11 ~~be~~ IS determined as follows

12 (a) The county in which a defendant resides ~~or~~ has a
 13 place of business or conducts business or in which the regis-
 14 tered office of a defendant corporation is located is a proper
 15 county in which to commence and try an action

16 (b) If none of the defendants meets any of the criteria in
 17 subdivision (a), the county in which any plaintiff resides ~~or~~ or
 18 has a place of business or in which the registered office of a
 19 plaintiff corporation is located is a proper county in which to
 20 commence and try an action

21 (c) An action against a fiduciary appointed by court order
 22 shall be commenced in the county in which the fiduciary was
 23 appointed

24 Sec 1627 Except for actions founded on contract and
 25 actions provided for in sections 1605 1611, 1615, and ~~1629(a)~~
 26 ~~(b), and (c)~~ 1629, the county in which all or a part of the
 27 cause of action arose is a proper county in which to commence and

1 try the action Suits against the surety of a public officer or
2 his or her appointees ~~shall~~ ARE not ~~be~~ excepted from the
3 application of this section

4 Sec 1629 (1) Subject to subsection (2), in an action
5 based on tort ~~the following provisions apply (a) A county in~~
6 ~~which all or a part of the cause of action arose and~~ OR ANOTHER
7 LEGAL THEORY SEEKING DAMAGES FOR PERSONAL INJURY PROPERTY
8 DAMAGE, OR WRONGFUL DEATH, A COUNTY in which either of the fol-
9 lowing apply is a proper county in which to commence and try the
10 action

11 ~~(i) The defendant resides has a place of business, or con-~~
12 ~~ducts business in that county~~

13 ~~(ii) The registered office of a defendant corporation is~~
14 ~~located in that county~~

15 ~~(b) If no county satisfies the criteria under subdivision~~
16 ~~(a), a county in which all or part of the cause of action arose~~
17 ~~and in which either of the following apply is a proper county in~~
18 ~~which to commence and try the action~~

19 ~~(i) The plaintiff resides, has a place of business, or con-~~
20 ~~ducts business in that county~~

21 ~~(ii) The registered office of a plaintiff corporation is~~
22 ~~located in that county~~

23 ~~(c) If no county satisfies the criteria under subdivision~~
24 ~~(a) or (b), a county in which both of the following apply is a~~
25 ~~proper county in which to commence and try the action~~

1 ~~(1) The plaintiff resides has a place of business or~~
2 ~~conducts business in that county or the registered office of a~~
3 ~~plaintiff corporation is located in that county~~

4 ~~(2) The defendant resides has a place of business or con-~~
5 ~~ducts business in that county or the registered office of a~~
6 ~~defendant corporation is located in that county~~

7 (A) THE ORIGINAL EVENT THAT RESULTED IN THE INJURY, PROPERTY
8 DAMAGE OR DEATH FOR WHICH THE PLAINTIFF IS CLAIMING DAMAGES
9 OCCURRED IN THAT COUNTY

10 (B) THE PLAINTIFF RESIDED IN THAT COUNTY AT THE TIME OF THE
11 ORIGINAL EVENT THAT RESULTED IN THE INJURY, PROPERTY DAMAGE OR
12 DEATH

13 (2) ~~(d)~~ If no county satisfies the criteria under
14 ~~subdivision (a) (b) or (c)~~ SUBSECTION (1) a county ~~which~~
15 THAT satisfies the criteria under section 1621 or 1627 is a
16 proper county in which to commence and try an action

17 (3) ~~(2)~~ Either party may file a motion for a change in
18 venue based on hardship or inconvenience Venue shall only be
19 changed under this subsection to the county in which the moving
20 party resides If the court determines pursuant to section 1653
21 that the motion is frivolous the court shall assess costs
22 against the moving party

23 Sec 1641 (1) ~~where~~ EXCEPT AS PROVIDED IN SUBSECTION
24 (2), IF causes of action are joined whether properly or not the
25 venue may be laid in any county in which either cause of action
26 if sued upon separately could have been commenced and tried,

1 subject to separation and change pursuant to and subject to the
2 conditions imposed by court rules

3 (2) IF MORE THAN 1 CAUSE OF ACTION IS PLEADED IN THE INITIAL
4 COMPLAINT OR ADDED BY AMENDMENT AT ANY TIME DURING THE ACTION AND
5 1 OF THE CAUSES OF ACTION IS BASED ON TORT OR SEEKS DAMAGES BASED
6 ON ANOTHER LEGAL THEORY FOR PERSONAL INJURY, PROPERTY DAMAGE, OR
7 WRONGFUL DEATH VENUE SHALL BE DETERMINED UNDER SECTION 1629

8 Sec 2925d ~~When~~ IF a release or a covenant not to sue or
9 not to enforce judgment is given in good faith to 1 of 2 or more
10 persons liable in tort for the same injury or the same wrongful
11 death, BOTH OF THE FOLLOWING APPLY

12 (a) It does not discharge any of the other tort-feasors from
13 liability for the injury or wrongful death unless its terms so
14 provide

15 ~~(b) It reduces the claim against the other tort feasors to~~
16 ~~the extent of any amount stipulated by the release or the cove-~~
17 ~~nant or to the extent of the amount of the consideration paid for~~
18 ~~it, whichever amount is the greater~~

19 (B) ~~(c)~~ It discharges the tort-feasor to whom it is given
20 from all liability for contribution to any other tort-feasor

21 Sec 2945 As used in sections 2946 to ~~2949~~ 2948 and sec-
22 tion 5805 ~~"products"~~ PRODUCT liability action means an action
23 based on any legal or equitable theory of liability brought for
24 or on account of death or injury to person or DAMAGE TO property
25 caused by or resulting from the manufacture, construction,
26 design formula development of standards preparation
27 processing assembly inspection testing listing, certifying

1 warning instructing marketing advertising packaging or
2 labeling of a product or a component of a product

3 Sec 2948 ~~It shall be~~ EVIDENCE IS admissibile ~~as~~
4 ~~evidence~~ in a ~~products~~ PRODUCT liability action that, before
5 the event of death or injury to person or DAMAGE TO property
6 pamphlets booklets, labels or other written warnings were pro-
7 vided ~~which~~ THAT gave notice to foreseeable users of the mate-
8 rial risk of injury, death, or damage connected with the foresee-
9 able use of the product or provided instructions as to the fore-
10 seeable uses applications or limitations of the product ~~which~~
11 THAT the defendant knew or should have known

12 SEC 2955 AS USED IN THIS SECTION AND SECTIONS 2956 TO
13 2959 AND IN SECTION 6304

14 (A) 'COMPARATIVE FAULT MEANS THE DEGREE TO WHICH THE FAULT
15 OF EACH PERSON IS A PROXIMATE CAUSE OF THE TORT

16 (B) FAULT MEANS A TORTIOUS ACT OR OMISSION OF A PERSON
17 THAT IS A PROXIMATE CAUSE OF INJURY OR DEATH TO ANOTHER PERSON
18 OF DAMAGE TO PROPERTY, TANGIBLE OR INTANGIBLE OR OF ECONOMIC
19 INJURY

20 (C) PERSON MEANS AN INDIVIDUAL, SOLE PROPRIETORSHIP COR-
21 PORATION LIMITED LIABILITY CORPORATION COMPANY ASSOCIATION
22 FIRM PARTNERSHIP, SOCIETY, JOINT STOCK COMPANY, OR OTHER ENTITY
23 INCLUDING A GOVERNMENTAL ENTITY OR UNINCORPORATED ASSOCIATION

24 SEC 2956 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN
25 AN ACTION BASED ON TORT, THE LIABILITY OF EACH DEFENDANT FOR DAM-
26 AGES IS SEVERAL ONLY AND IS NOT JOINT A PARTY IS JOINTLY AND
27 SEVERALLY LIABLE FOR THE FAULT OF ANOTHER PERSON, OR FOR PAYMENT

1 OF THE PROPORTIONATE SHARE OF THE DAMAGES ATTRIBUTABLE TO ANOTHER
2 PARTY, ONLY IF A PERSON WAS ACTING AS AN AGENT OR SERVANT OF THE
3 PARTY AT THE TIME OF THE FAULT IF A DEFENDANT IS FOUND JOINTLY
4 AND SEVERALLY LIABLE UNDER THIS SECTION THE DEFENDANT HAS THE
5 RIGHT TO CONTRIBUTION AS PROVIDED IN THIS ACT ONLY FROM ANOTHER
6 PERSON THAT IS JOINTLY AND SEVERALLY LIABLE WITH THAT DEFENDANT

7 SEC 2957 (1) IN AN ACTION BASED ON TORT THE LIABILITY OF
8 EACH PERSON SHALL BE ALLOCATED UNDER THIS SECTION BY THE TRIER OF
9 FACT AND SUBJECT TO SECTION 6304(2) IN DIRECT PROPORTION TO THE
10 PERSON S PERCENTAGE OF FAULT

11 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION IN
12 ASSESSING PERCENTAGES OF FAULT AS PROVIDED IN SUBSECTION (1) THE
13 TRIER OF FACT SHALL CONSIDER THE FAULT OF EACH PERSON, REGARDLESS
14 OF WHETHER THE PERSON IS, OR COULD HAVE BEEN, NAMED AS A PARTY TO
15 THE SUIT THE TRIER OF FACT SHALL NOT CONSIDER THE FAULT OF A
16 NONPARTY UNLESS A DEFENDANT GIVES NOTICE WITHIN 120 DAYS AFTER
17 THE FILING OF THE DEFENDANT S ANSWER THAT A NONPARTY IS WHOLLY OR
18 PARTIALLY AT FAULT THE NOTICE SHALL DESIGNATE THE NONPARTY AND
19 SET FORTH THE NONPARTY S NAME AND LAST KNOWN ADDRESS OR THE BEST
20 IDENTIFICATION OF THE NONPARTY THAT IS POSSIBLE TOGETHER WITH A
21 BRIEF STATEMENT OF THE BASIS FOR BELIEVING THE NONPARTY TO BE AT
22 FAULT

23 (3) SECTIONS 2955 TO 2959 DO NOT ELIMINATE OR DIMINISH A
24 DEFENSE OR IMMUNITY THAT CURRENTLY EXISTS, EXCEPT AS EXPRESSLY
25 PROVIDED IN THOSE SECTIONS ASSESSMENTS OF PERCENTAGES OF FAULT
26 FOR NONPARTIES ARE USED ONLY TO ACCURATELY DETERMINE THE FAULT OF
27 NAMED PARTIES IF FAULT IS ASSESSED AGAINST A NONPARTY A

1 FINDING OF FAULT DOES NOT SUBJECT THE NONPARTY TO LIABILITY IN
2 THAT ACTION AND SHALL NOT BE INTRODUCED AS EVIDENCE OF LIABILITY
3 IN ANOTHER ACTION

4 SEC 2958 IN AN ACTION BASED ON TORT, A PLAINTIFF S CON-
5 TRIBUTORY FAULT DOES NOT BAR THAT PLAINTIFF S RECOVERY OF
6 DAMAGES THE PLAINTIFF S DAMAGE RECOVERY SHALL BE REDUCED BY
7 THAT PLAINTIFF S PERCENTAGE OF CONTRIBUTORY FAULT IF A
8 PLAINTIFF S PERCENTAGE OF CONTRIBUTORY FAULT IS EQUAL TO OR
9 GREATER THAN THE AGGREGATE FAULT OF THE OTHER PERSON OR PERSONS
10 WHETHER OR NOT PARTIES TO THE ACTION THAT PLAINTIFF SHALL NOT
11 RECOVER NONECONOMIC DAMAGES AND THAT PLAINTIFF S ECONOMIC DAMAGES
12 SHALL BE REDUCED BY THAT PLAINTIFF S PERCENTAGE OF CONTRIBUTORY
13 FAULT

14 SEC 2959 (1) THE PERSON SEEKING TO ESTABLISH FAULT UNDER
15 SECTIONS 2957 AND 2958 HAS THE BURDEN OF ALLEGING AND PROVING
16 THAT FAULT

17 (2) SECTIONS 2957 AND 2958 DO NOT CREATE A CAUSE OF ACTION
18 AND DO NOT ALTER THE IMMUNITY OF ANY PERSON

19 Sec 5805 (1) A person shall not bring or maintain an
20 action to recover damages for injuries to persons or property
21 unless after the claim first accrued to the plaintiff or to
22 someone through whom the plaintiff claims the action is com-
23 menced within the periods of time prescribed by this section

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

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

1 (4) Except as otherwise provided in this chapter, the period
 2 of limitations is 2 years for an action charging malpractice
 3 THIS SUBSECTION APPLIES WITHOUT LIMITATION TO AN ACTION CHARG-
 4 ING MALPRACTICE AGAINST A CERTIFIED PUBLIC ACCOUNTANT

5 (5) The period of limitations is 2 years for an action
 6 against a sheriff charging misconduct or neglect of office by the
 7 sheriff or the sheriff s deputies

8 (6) The period of limitations is 2 years after the expira-
 9 tion of the year for which a constable was elected for actions
 10 based on the constable s negligence or misconduct as constable

11 (7) The period of limitations is 1 year for an action charg-
 12 ing libel or slander

13 (8) The period of limitations is 3 years after the time of
 14 the death, ~~or~~ injury OR DAMAGE for all other actions to
 15 recover damages for the death OR INJURY of a person or for
 16 ~~injury~~ DAMAGE to ~~a person or~~ property

17 (9) The period of limitations is 3 years for a ~~products~~
 18 PRODUCT liability action ~~However, in the case of a product~~
 19 ~~which has been in use for not less than 10 years, the plaintiff,~~
 20 ~~in proving a prima facie case shall be required to do so without~~
 21 ~~benefit of any presumption~~ A PRODUCT LIABILITY ACTION SHALL NOT
 22 BE BROUGHT MORE THAN 15 YEARS AFTER THE DATE OF COMPLETION OF THE
 23 MANUFACTURING PROCESS FOR THE PRODUCT ON WHICH THE ACTION IS
 24 BASED UNLESS THE PRODUCT WAS ORIGINALLY PURCHASED FOR MORE THAN
 25 \$50,000 00 THE DOLLAR AMOUNT PRESCRIBED BY THIS SECTION IS
 26 BASED ON THE DECEMBER 31 1994 VALUE OF THE DOLLAR SO THAT THE
 27 PURCHASE PRICE OF THE PRODUCT IN QUESTION SHALL BE ADJUSTED FROM

1 THE DATE OF PURCHASE BASE TO DECEMBER 31, 1994, ACCORDING TO
2 INCREASES AND DECREASES IN THE CONSUMER PRICE INDEX AS PUBLISHED
3 BY THE UNITED STATES GOVERNMENT

4 (10) The period of limitations for an action against a state
5 licensed architect, professional engineer land surveyor or con-
6 tractor based on an improvement to real property ~~shall be~~ IS as
7 provided in section 5839

8 Sec 6304 (1) In a personal injury action involving fault
9 of more than 1 party to the action OR NONPARTIES, including
10 third-party defendants, the court, unless otherwise agreed by all
11 parties to the action, shall instruct the jury to answer special
12 interrogatories or, if there is no jury, shall make findings
13 indicating both of the following

14 (a) The total amount of each plaintiff s damages

15 (b) The percentage of the total fault of all of the parties
16 AND NONPARTIES regarding each claim as ~~to each plaintiff~~

17 ~~defendant, and third party defendant~~ PROVIDED IN SECTIONS 2956
18 TO 2959

19 (2) In determining the percentages of fault under subsection
20 (1)(b) the trier of fact shall consider both the nature of the
21 conduct of each party AND NONPARTY at fault and the extent of the
22 causal relation between the conduct and the damages claimed

23 ~~(3) If it is determined under subsections (1) and (2) that~~
24 ~~a plaintiff is not at fault subsections (5) and (6) do not~~
25 ~~apply~~

26 ~~(4) Subsections (5) and (6) do not apply to a products~~
27 ~~liability action, as defined in section 2945~~

1 (3) ~~-(5)-~~ The court shall determine the award of damages to
 2 each plaintiff in accordance with the findings under subsection
 3 (1) subject to any reduction under subsection ~~-(6)-~~ (4) or sec-
 4 tion ~~2925d or~~ 6303, and enter judgment against each party,
 5 including a third-party defendant, except that judgment shall not
 6 be entered against a person who has been released from liability
 7 pursuant to section 2925d ~~Except as otherwise provided in sub-~~
 8 ~~section (7), a~~ A person shall not be required to pay damages in
 9 an amount greater than his or her percentage of fault

10 (4) ~~-(6)-~~ In an action alleging medical malpractice, the
 11 court shall reduce an award of damages in excess of 1 of the lim-
 12 itations set forth in section 1483 to the amount of the appropri-
 13 ate limitation set forth in section 1483 The jury shall not be
 14 advised by the court or by counsel for either party of the limi-
 15 tations set forth in section 1483 or any other provision of sec-
 16 tion 1483

17 ~~-(7) Except as otherwise provided in this subsection and~~
 18 ~~subsection (8), upon motion made not later than 6 months after a~~
 19 ~~final judgment is entered, the court shall determine whether all~~
 20 ~~or part of a party's share of the obligation is uncollectible~~
 21 ~~from that party and shall reallocate any uncollectible amount~~
 22 ~~among the other parties according to their respective percentages~~
 23 ~~of fault as determined under subsection (1) A party shall not~~
 24 ~~be required to pay a percentage of any uncollectible amount that~~
 25 ~~exceeds that party's percentage of fault as determined under sub-~~
 26 ~~section (1) The party whose liability is reallocated continues~~

~~1 to be subject to contribution and to any continuing liability to
2 the plaintiff on the judgment~~

~~3 (8) Notwithstanding subsection (3), a governmental agency,
4 other than a governmental hospital or medical care facility, is
5 not required to pay a percentage of any uncollectible amount that
6 exceeds the governmental agency's percentage of fault as deter-
7 mined under subsection (1)~~

8 Sec 6306 (1) After a verdict rendered by a trier of fact
9 in favor of a plaintiff, an order of judgment shall be entered by
10 the court The order of judgment shall be entered against each
11 defendant, including a third-party defendant in the following
12 order and in the following judgment amounts

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

15 (b) All past noneconomic damages

16 (c) All future economic damages less medical and other
17 health care costs, and less collateral source payments determined
18 to be collectible under section 6303(5) reduced to gross present
19 cash value

20 (d) All future medical and other health care costs reduced
21 to gross present cash value

22 (e) All future noneconomic damages reduced to gross present
23 cash value

24 (f) All taxable and allowable costs, including interest as
25 permitted by section 6013 or 6455 on the judgment amounts

26 (2) As used in this section 'gross present cash value'
27 means the total amount of future damages reduced to present value

1 at a rate of 5% per year for each year in which those damages
2 accrue, as found by the trier of fact pursuant to
3 section 6305(1)(b)

4 ~~(3) If there is an individual who was released from liabil-~~
5 ~~ity pursuant to section 2925d, the total judgment amount shall be~~
6 ~~reduced, as provided in subsection (5), by an amount equal to the~~
7 ~~amount of the settlement between the plaintiff and that~~
8 ~~individual~~

9 (3) ~~(4)~~ If the plaintiff was assigned a percentage of
10 fault pursuant to section 6304 the total judgment amount shall
11 be reduced as provided in subsection ~~(5)~~ (4) by an amount
12 equal to the percentage of plaintiff s fault

13 (4) ~~(5)~~ When reducing the judgment amount as provided in
14 ~~subsections~~ SUBSECTION (3) ~~and (4)~~, the court shall deter-
15 mine the ratio of total past damages to total future damages and
16 shall allocate the amounts to be deducted proportionally between
17 the past and future damages

18 Section 2 Section 2949 of Act No 236 of the Public Acts
19 of 1961, being section 600 2949 of the Michigan Compiled Laws, is
20 repealed