



HOUSE BILL No. 5636

June 9 1994 Introduced by Reps Stille Hammerstrom Hill Walberg Middleton Voorhees Llewellyn Fitzgerald Rhead Bobier Gustafson Whyman McBryde Galloway Dolan, Bender Kukuk Dalman Gnodtke Brackenridge Johnson, LeTarte, Horton McManus, Gernaat and Shugars and referred to the Committee on Judiciary

A bill to amend sections 2925d, 6303, 6304, and 6306 of Act No 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961, sections 6303 and 6306 as added by Act No 178 of the Public Acts of 1986 and section 6304 as amended by Act No 78 of the Public Acts of 1993, being sections 600 2925d, 600 6303 600 6304, and 600 6306 of the Michigan Compiled Laws and to add section 6302

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2925d, 6303, 6304, and 6306 of Act
2 No 236 of the Public Acts of 1961, sections 6303 and 6306 as
3 added by Act No 178 of the Public Acts of 1986 and section 6304
4 as amended by Act No 78 of the Public Acts of 1993, being sec-
5 tions 600 2925d, 600 6303, 600 6304, and 600 6306 of the Michigan
6 Compiled Laws, are amended and section 6302 is added to read as
7 follows

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

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

8 (b) ~~It~~ EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 6304 AND
9 6306, IT reduces the claim against the other tort-feasors to the
10 extent of any amount stipulated by the release or the covenant or
11 to the extent of the amount of the consideration paid for it,
12 whichever amount is the greater

13 (c) It discharges the tort-feasor to whom it is given from
14 all liability for contribution to any other tort-feasor

15 SEC 6302 IF A PROVISION OF THIS CHAPTER CONFLICTS WITH A
16 PROVISION OF ACT NO 170 OF THE PUBLIC ACTS OF 1964, BEING SEC-
17 TIONS 691 1401 TO 691 1415 OF THE MICHIGAN COMPILED LAWS THE
18 PROVISION IN ACT NO 170 OF THE PUBLIC ACTS OF 1964 CONTROLS

19 Sec 6303 (1) In a personal injury action in which the
20 plaintiff seeks to recover for the expense of medical care, reha-
21 bilitation services, loss of earnings, loss of earning capacity,
22 or other economic loss, evidence to establish that the expense or
23 loss was paid or is payable, in whole or in part, by a collateral
24 source ~~shall be~~ IS admissible ~~to~~ IN the court in which the
25 action was brought after a verdict for the plaintiff and before a
26 judgment is entered on the verdict Subject to subsection (5),
27 if the court determines that all or part of the plaintiff s

1 expense or loss has been paid or is payable by a collateral
2 source, the court shall reduce that portion of the judgment
3 ~~which~~ THAT represents damages paid or payable by a collateral
4 source by an amount equal to the sum determined pursuant to sub-
5 section (2) This reduction shall not exceed the amount of the
6 ~~judgment~~ VERDICT for economic loss or that portion of the ver-
7 dict ~~which~~ THAT represents damages paid or payable by a collat-
8 eral source

9 (2) The court shall determine the amount of the plaintiff's
10 expense or loss ~~which~~ THAT has been paid or is payable by a
11 collateral source Except for premiums on insurance ~~which~~ THAT
12 is required by law, that amount shall then be reduced by a sum
13 equal to the premiums, or that portion of the premiums, paid for
14 the particular benefit by the plaintiff or the plaintiff's family
15 or incurred by the plaintiff's employer on behalf of the plain-
16 tiff in securing the benefits received or receivable from the
17 collateral source

18 (3) Within 10 days after a verdict for the plaintiff,
19 plaintiff s attorney shall send notice of the verdict by regis-
20 tered mail to all persons entitled by contract to a lien against
21 the proceeds of plaintiff's recovery If a contractual lien
22 holder does not exercise the lien holder's right of subrogation
23 within 20 days after receipt of the notice of the verdict, the
24 lien holder ~~shall lose~~ LOSES the right of subrogation This
25 subsection ~~shall~~ only ~~apply~~ APPLIES to contracts executed or
26 renewed ~~on or~~ after ~~the effective date of this section~~
27 SEPTEMBER 30, 1986

1 (4) As used in this section collateral source means
2 benefits received or receivable from an insurance policy bene-
3 fits payable ~~pursuant to~~ UNDER a contract with a health care
4 corporation, dental care corporation, or health maintenance
5 organization employee benefits social security benefits
6 worker's compensation benefits or medicare benefits
7 ~~Collateral~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
8 COLLATERAL source does not include life insurance benefits or
9 benefits paid by a person, partnership, association, corporation,
10 or other legal entity entitled by law to a lien against the pro-
11 ceeds of a recovery by a plaintiff in a civil action for
12 damages ~~Collateral~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUB-
13 SECTION, COLLATERAL source does not include benefits paid or pay-
14 able by a person partnership, association, corporation, or other
15 legal entity entitled by contract to a lien against the proceeds
16 of a recovery by a plaintiff in a civil action for damages, if
17 the contractual lien has been exercised pursuant to subsection
18 (3) IN AN ACTION UNDER SECTION 2 OF ACT NO 170 OF THE PUBLIC
19 ACTS OF 1964, BEING SECTION 691 1402 OF THE MICHIGAN COMPILED
20 LAWS COLLATERAL SOURCE INCLUDES BENEFITS PAID OR PAYABLE BY A
21 PERSON, PARTNERSHIP, ASSOCIATION, CORPORATION, OR OTHER LEGAL
22 ENTITY ENTITLED BY LAW OR CONTRACT TO A LIEN AGAINST THE PROCEEDS
23 OF A RECOVERY BY A PLAINTIFF IN A CIVIL ACTION FOR DAMAGES
24 (5) For purposes of this section, benefits from a collateral
25 source shall not be considered payable or receivable unless the
26 court makes a determination that there is a previously existing

1 contractual or statutory obligation on the part of the collateral
2 source to pay the benefits

3 Sec 6304 (1) In a personal injury action involving fault
4 of more than 1 ~~party to the action including third party~~
5 ~~defendants, the court, unless otherwise agreed by all parties to~~
6 ~~the action,~~ PERSON, INCLUDING BUT NOT LIMITED TO PLAINTIFFS
7 DEFENDANTS, THIRD-PARTY DEFENDANTS, AND PERSONS RELEASED FROM
8 LIABILITY UNDER SECTION 2925D THE COURT shall instruct the jury
9 to answer special interrogatories or, if there is no jury, shall
10 make findings indicating both of the following

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

12 (b) The percentage of the total fault ~~of all of the~~
13 ~~parties~~ regarding each claim ~~as to~~ THAT IS ATTRIBUTABLE TO
14 EACH PERSON CONTRIBUTING TO THE INJURIES, INCLUDING, BUT NOT
15 LIMITED TO, each plaintiff, defendant, ~~and~~ third-party
16 defendant, AND PERSON RELEASED FROM LIABILITY UNDER SECTION
17 2925D

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

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

25 ~~(4) Subsections (5) and (6) do not apply to a products~~
26 ~~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) or section~~
 4 ~~2925d or 6303, and enter judgment against each party, including a~~
 5 ~~third party defendant, except that~~ A judgment shall not be
 6 entered against a person who has been released from liability
 7 ~~pursuant to~~ AS PROVIDED IN section 2925d

8 (4) Except as otherwise provided in THIS SUBSECTION AND sub-
 9 section (7), a person shall not be required to pay damages in an
 10 amount greater than ~~his or her~~ THAT PERSON S percentage of
 11 fault THIS SUBSECTION DOES NOT APPLY TO ANY OF THE FOLLOWING

12 (A) A PRODUCTS LIABILITY ACTION

13 (B) DAMAGES AWARDED AGAINST A GOVERNMENTAL HOSPITAL OR MEDI-
 14 CAL CARE FACILITY

15 (C) IF NO FAULT IS ATTRIBUTED TO THE PLAINTIFF UNDER SECTION
 16 6304, DAMAGES AWARDED AGAINST A NONGOVERNMENTAL PERSON

17 (5) IN THE INSTANCES EXEMPTED UNDER SUBSECTION (4), LIABIL-
 18 ITY IS JOINT AND SEVERAL, SUBJECT TO REDUCTION UNDER SECTIONS
 19 2925D AND 6303

20 (6) In an action alleging medical malpractice, the court
 21 shall reduce an award of damages in excess of ~~1 of the~~ limita-
 22 tions set forth in section 1483 to the amount of the appropriate
 23 limitation set forth in section 1483 The jury shall not be
 24 advised by the court or by counsel for either party of the limi-
 25 tations set forth in section 1483 or any other provision of sec-
 26 tion 1483

1 (7) Except as otherwise provided in this subsection and
2 subsection ~~(8)~~ (5), upon motion made not later than 6 months
3 after a final judgment is entered, the court shall determine
4 whether all or part of a party's share of the obligation is
5 uncollectible from that party, and shall reallocate ~~any~~ THE
6 uncollectible amount among the other parties according to their
7 respective percentages of fault as determined under subsection
8 (1) IF A PLAINTIFF SETTLES WITH A PERSON FOR AN AMOUNT THAT IS
9 LESS THAN THE AMOUNT ALLOCATED TO THE PERSON BASED ON THE PERCENTAGE
10 OF FAULT ATTRIBUTED TO THAT PERSON UNDER SUBSECTION (1), THE
11 AMOUNT ALLOCATED TO THAT PERSON THAT EXCEEDS THE SETTLEMENT
12 AMOUNT SHALL NOT BE CONSIDERED UNCOLLECTIBLE FOR THE PURPOSES OF
13 THIS SUBSECTION A party shall not be required to pay a percentage
14 of ~~any~~ AN uncollectible amount that exceeds that party's
15 percentage of fault as determined under subsection (1) A PARTY
16 SHALL NOT BE REQUIRED TO PAY AN AMOUNT ALLOCATED UNDER THIS SUBSECTION
17 THAT, WHEN ADDED TO THE AMOUNT FOR WHICH THE PARTY IS
18 ALREADY LIABLE, EXCEEDS A LIMITATION ON A RECOVERY AGAINST THAT
19 PARTY AS PROVIDED IN THIS OR ANOTHER ACT The party whose liability
20 is reallocated continues to be subject to contribution and to
21 any continuing liability to the plaintiff on the judgment
22 ~~(8) Notwithstanding subsection (3), a governmental agency,~~
23 ~~other than a governmental hospital or medical care facility, is~~
24 ~~not required to pay a percentage of any uncollectible amount that~~
25 ~~exceeds the governmental agency's percentage of fault as determined~~
26 ~~under subsection (1)~~

1 Sec 6306 (1) After a verdict rendered by a trier of fact
2 in favor of a plaintiff, an order of judgment shall be entered by
3 the court The order of judgment shall be entered against each
4 defendant, including a third-party defendant ~~, in the following~~
5 ~~order and in the following judgment amounts~~ SUBJECT TO THE
6 REDUCTIONS PROVIDED BY SUBSECTIONS (3) AND (4), THE AMOUNT OF THE
7 VERDICT SHALL BE DIVIDED AMONG THE FOLLOWING CATEGORIES AS
8 APPROPRIATE

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

11 (b) All past noneconomic damages

12 (c) All future economic damages less medical and other
13 health care costs, and less collateral source payments determined
14 to be collectible under section 6303(5) reduced to gross present
15 cash value

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

18 (e) All future noneconomic damages reduced to gross present
19 cash value

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

22 (2) As used in this section, "gross present cash value"
23 means the total amount of future damages reduced to present value
24 at a rate of 5% per year COMPOUNDED ANNUALLY for each year in
25 which those damages accrue, as found by the trier of fact pursu-
26 ant to section 6305(1)(b)

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

6 (3) ~~-(4)~~ If the plaintiff was assigned a percentage of
7 fault pursuant to section 6304, the total judgment amount shall
8 be reduced ~~as provided in subsection (5),~~ by an amount equal
9 to the percentage of plaintiff's fault ~~-(5)~~ When reducing the
10 TOTAL judgment amount ~~as provided in subsections (3) and (4)~~
11 UNDER THIS SUBSECTION, the court shall determine the ratio of
12 total past damages to total future damages and shall allocate the
13 amounts to be deducted proportionally between the past and future
14 damages

15 (4) AFTER THE REDUCTION UNDER SUBSECTION (3), IF ANY, THE
16 TOTAL JUDGMENT AMOUNT SHALL BE REDUCED BY THE AMOUNT OF A SETTLE-
17 MENT BETWEEN THE PLAINTIFF AND A PERSON RELEASED FROM LIABILITY
18 UNDER SECTION 2925D TO THE EXTENT THAT THE AMOUNT ALLOCATED TO
19 THE RELEASED PERSON BASED ON THE PERCENTAGE OF FAULT ATTRIBUTED
20 TO THAT PERSON UNDER SECTION 6304 EXCEEDS THE SETTLEMENT AMOUNT
21 IF MORE THAN 1 PERSON SETTLES AND IS RELEASED FROM LIABILITY
22 UNDER SECTION 2925D, THE TOTAL JUDGMENT AMOUNT SHALL BE REDUCED
23 BY THE AGGREGATE OF THE SETTLEMENT AMOUNTS TO THE EXTENT THAT THE
24 AGGREGATE OF THE AMOUNTS ALLOCATED TO THOSE PERSONS BASED ON THE
25 PERCENTAGES OF FAULT ATTRIBUTED TO THOSE PERSONS UNDER SECTION
26 6304 EXCEEDS THE AGGREGATED SETTLEMENT AMOUNTS

1 (5) IF MORE THAN 1 PARTY IS LIABLE FOR THE JUDGMENT EACH
2 PARTY SHALL PAY THE PORTION OF THE JUDGMENT AFTER THE REDUCTIONS
3 UNDER THIS SECTION EQUAL TO THE PERCENTAGE OF FAULT ATTRIBUTED TO
4 THE PARTY UNDER SECTION 6304 EXCEPT AS PROVIDED IN SECTION
5 6304, A PARTY SHALL NOT PAY MORE THAN THE AMOUNT ALLOCATED BASED
6 ON THE PERCENTAGE OF FAULT ATTRIBUTED TO THE PARTY UNDER SECTION
7 6304