

Act No. 161  
Public Acts of 1995  
Approved by the Governor  
September 29, 1995  
Filed with the Secretary of State  
September 29, 1995

**STATE OF MICHIGAN**  
**88TH LEGISLATURE**  
**REGULAR SESSION OF 1995**

Introduced by Reps. Nye, Dalman, Fitzgerald, Bush, Lowe, Ryan, Law, Jersevic and Galloway

# **ENROLLED HOUSE BILL No. 4508**

AN ACT to amend sections 1621, 1627, 1629, 1641, 2925d, 2945, 2948, 6304, and 6306 of Act No. 236 of the Public Acts of 1961, entitled as amended "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," sections 1621 and 1627 as amended and sections 1629 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 600.1621, 600.1627, 600.1629, 600.1641, 600.2925d, 600.2945, 600.2948, 600.6304, and 600.6306 of the Michigan Compiled Laws; to add sections 2956, 2957, 2958, 2959, and 2960; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Section 1. Sections 1621, 1627, 1629, 1641, 2925d, 2945, 2948, 6304, and 6306 of Act No. 236 of the Public Acts 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 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, 600.6304, and 600.6306 of the Michigan Compiled Laws, are amended and sections 2956, 2957, 2958, 2959, and 2960 are added to read as follows:

Sec. 1621. Except for actions provided for in sections 1605, 1611, 1615, and 1629, venue is determined as follows:

(a) The county in which a defendant resides, has a place of business, or conducts business, or in which the registered office of a defendant corporation is located, is a proper county in which to commence and try an action.

(b) If none of the defendants meet 1 or more of the criteria in subdivision (a), the county in which a plaintiff resides or has a place of business, or in which the registered office of a plaintiff corporation is located, is a proper county in which to commence and try an action.

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

Sec. 1627. Except for actions founded on contract and actions provided for in sections 1605, 1611, 1615, and 1629, the county in which all or a part of the cause of action arose is a proper county in which to commence and try the action. Suits against the surety of a public officer or his or her appointees are not excepted from the application of this section.

Sec. 1629. (1) Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:

(a) The county in which the original injury occurred and in which either of the following applies is a proper county in which to commence and try the action:

(i) The defendant resides, has a place of business, or conducts business in that county.

(ii) The registered office of a defendant corporation is located in that county.

(b) If no county satisfies the criteria under subdivision (a), the county in which the original injury occurred and in which either of the following applies is a proper county in which to commence and try the action:

(i) The plaintiff resides, has a place of business, or conducts business in that county.

(ii) The registered office of a plaintiff corporation is located in that county.

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

(i) The plaintiff resides, has a place of business, or conducts business in that county, or the registered office of a plaintiff corporation is located in that county.

(ii) The defendant resides, has a place of business, or conducts business in that county, or the registered office of a defendant corporation is located in that county.

(d) If no county satisfies the criteria under subdivision (a), (b), or (c), a county that satisfies the criteria under section 1621 or 1627 is a proper county in which to commence and try an action.

(2) Either party may file a motion for a change in venue based on hardship or inconvenience.

(3) For the purpose of this section, in a product liability action, a defendant is considered to conduct business in a county in which the defendant's product is sold at retail.

Sec. 1641. (1) Except as provided in subsection (2), if causes of action are joined, whether properly or not, the venue may be laid in any county in which either cause of action, if sued upon separately, could have been commenced and tried, subject to separation and change as provided by court rule.

(2) If more than 1 cause of action is pleaded in the initial complaint or added by amendment at any time during the action and 1 of the causes of action is based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, venue shall be determined under section 1629.

Sec. 2925d. If a release or a covenant not to sue or not to enforce judgment is given in good faith to 1 of 2 or more persons for the same injury or the same wrongful death, both of the following apply:

(a) The release or covenant does not discharge 1 or more of the other persons from liability for the injury or wrongful death unless its terms so provide.

(b) The release or covenant discharges the person to whom it is given from all liability for contribution to any other person for the injury or wrongful death.

Sec. 2945. As used in sections 2946 to 2948 and section 5805, "product liability action" means an action based on a legal or equitable theory of liability brought for or on account of death or injury to person or damage to property caused by or resulting from the manufacture, construction, design, formula, development of standards, preparation, processing, assembly, inspection, testing, listing, certifying, warning, instructing, marketing, advertising, packaging, or labeling of a product or a component of a product.

Sec. 2948. Evidence is admissible in a product liability action that, before the event of death or injury to person or damage to property, pamphlets, booklets, labels, or other written warnings were provided that gave notice to foreseeable users of the material risk of injury, death, or damage connected with the foreseeable use of the product or provided instructions as to the foreseeable uses, applications, or limitations of the product that the defendant knew or should have known.

Sec. 2956. Except as provided in section 6304, in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the liability of each defendant for damages is several only and is not joint. However, this section does not abolish an employer's vicarious liability for an act or omission of the employer's employee.

Sec. 2957. (1) In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the liability of each person shall be allocated under this section by the trier of fact and, subject to section 6304, in direct proportion to the person's percentage of fault.

(2) Except as otherwise provided in this subsection, in assessing percentages of fault as provided in subsection (1), the trier of fact shall consider the fault of each person, regardless of whether the person is, or could have been, named as a party to the action. However, the trier of fact shall not assess fault to a nonparty unless a party gives notice within 182 days after the filing of the defendant's answer that the nonparty is wholly or partially at fault. The notice shall designate the nonparty and set forth the nonparty's name and last known address, or the best identification of the nonparty that is possible, together with a brief statement of the basis for believing the nonparty is at fault.

(3) Upon motion of a party within 91 days after the filing and service of the notice identifying a nonparty under subsection (2), the court shall grant leave to the moving party to file and serve an amended pleading alleging 1 or more causes of action against that nonparty. A cause of action added under this subsection is not barred by a period of limitation unless the cause of action would have been barred by a period of limitation at the time of the filing of the original action.

(4) Sections 2956 to 2960 do not eliminate or diminish a defense or immunity that currently exists, except as expressly provided in those sections. Assessments of percentages of fault for nonparties are used only to accurately determine the fault of named parties. If fault is assessed against a nonparty, a finding of fault does not subject the nonparty to liability in that action and shall not be introduced as evidence of liability in another action.

Sec. 2958. Subject to section 2959, in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, a plaintiff's contributory fault does not bar that plaintiff's recovery of damages.

Sec. 2959. In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the court shall reduce the damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in section 6306. If that person's percentage of fault is greater than the aggregate fault of the other person or persons, whether or not parties to the action, the court shall reduce economic damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in section 6306, and noneconomic damages shall not be awarded.

Sec. 2960. (1) The person seeking to establish fault under sections 2957 to 2959 has the burden of alleging and proving that fault.

(2) Sections 2957 to 2959 do not create a cause of action.

Sec. 6304. (1) In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death involving fault of more than 1 person, including third-party defendants and nonparties, the court, unless otherwise agreed by all parties to the action, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating both of the following:

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

(b) The percentage of the total fault of all of the parties and nonparties regarding each claim as provided in sections 2956 to 2960.

(2) In determining the percentages of fault under subsection (1)(b), the trier of fact shall consider both the nature of the conduct of each party and nonparty at fault, including intentional conduct, and the extent of the causal relation between the conduct and the damages claimed.

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

(4) In an action alleging medical malpractice, the court shall reduce an award of damages in excess of 1 of the limitations set forth in section 1483 to the amount of the appropriate limitation set forth in section 1483. The jury shall not be advised by the court or by counsel for either party of the limitations set forth in section 1483 or any other provision of section 1483.

(5) In an action alleging medical malpractice, 1 of the following applies:

(a) If the plaintiff is determined not to have a percentage of fault under subsections (1) and (2), the liability of defendants that are persons or entities described in section 5838a(1) is joint and several.

(b) If the plaintiff is determined to have a percentage of fault under subsections (1) and (2), upon motion made not later than 6 months after a final judgment is entered, the court, in regard only to parties who are persons or entities described in section 5838a(1), shall determine whether all or part of such a party's share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other of those parties according to their respective percentages of fault as determined under subsection (1). A party is not required to pay a percentage of any

uncollectible amount that exceeds that party's percentage of fault as determined under subsection (1). The party whose liability is reallocated continues to be subject to contribution and to any continuing liability to the plaintiff on the judgment.

Sec. 6306. (1) After a verdict rendered by a trier of fact in favor of a plaintiff, an order of judgment shall be entered by the court. Subject to section 2959, the order of judgment shall be entered against each defendant, including a third-party defendant, in the following order and in the following judgment amounts:

- (a) All past economic damages, less collateral source payments as provided for in section 6303.
  - (b) All past noneconomic damages.
  - (c) All future economic damages, less medical and other health care costs, and less collateral source payments determined to be collectible under section 6303(5) reduced to gross present cash value.
  - (d) All future medical and other health care costs reduced to gross present cash value.
  - (e) All future noneconomic damages reduced to gross present cash value.
  - (f) All taxable and allowable costs, including interest as permitted by section 6013 or 6455 on the judgment amounts.
- (2) As used in this section, "gross present cash value" means the total amount of future damages reduced to present value at a rate of 5% per year for each year in which those damages accrue, as found by the trier of fact as provided in section 6305(1)(b).
- (3) If the plaintiff was assigned a percentage of fault under section 6304, the total judgment amount shall be reduced, subject to section 2959, by an amount equal to the percentage of plaintiff's fault. When reducing the judgment amount as provided in this subsection, the court shall determine the ratio of total past damages to total future damages and shall allocate the amounts to be deducted proportionally between the past and future damages.

Section 2. Section 2949 of Act No. 236 of the Public Acts of 1961, being section 600.2949 of the Michigan Compiled Laws, is repealed.

Section 3. Sections 1621, 1627, 1629, 1641, 2925d, 2945, 2948, 6304, and 6306 of Act No. 236 of the Public Acts of 1961, being sections 600.1621, 600.1627, 600.1629, 600.1641, 600.2925d, 600.2945, 600.2948, 600.6304, and 600.6306 of the Michigan Compiled Laws, as amended by this amendatory act, and sections 2956, 2957, 2958, 2959, and 2960 of Act No. 236 of the Public Acts of 1961, being sections 600.2956, 600.2957, 600.2958, 600.2959, and 600.2960 of the Michigan Compiled Laws, as added by this amendatory act, apply to cases filed on or after the effective date of this amendatory act.

Section 4. This amendatory act shall take effect September 1, 1995.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.