



SENATE BILL No. 379

March 7, 1995, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to amend section 6304 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," as amended by Act No. 78 of the Public Acts of 1993, being section 600.6304 of the Michigan Compiled Laws; and to add section 1484.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 6304 of Act No. 236 of the Public Acts
2 of 1961, as amended by Act No. 78 of the Public Acts of 1993,
3 being section 600.6304 of the Michigan Compiled Laws, is amended
4 and section 1484 is added to read as follows:

5 SEC. 1484. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (3), (4),
6 AND (5), THE TOTAL AMOUNT OF DAMAGES FOR NONECONOMIC LOSS
7 RECOVERABLE BY EACH PLAINTIFF AGAINST A GOVERNMENTAL AGENCY FOR
8 BODILY INJURY OR PROPERTY DAMAGE RESULTING FROM THE NEGLIGENT

1 (4) THE STATE TREASURER SHALL ADJUST THE LIMITATION ON DAM-
2 AGES FOR NONECONOMIC LOSS SET FORTH IN SUBSECTION (1) BY AN
3 AMOUNT DETERMINED BY THE STATE TREASURER AT THE END OF EACH CAL-
4 ENDAR YEAR TO REFLECT THE CUMULATIVE ANNUAL PERCENTAGE CHANGE IN
5 THE CONSUMER PRICE INDEX.

6 (5) IN AN ACTION DESCRIBED IN SUBSECTION (1) AGAINST 2 OR
7 MORE GOVERNMENTAL AGENCIES, THE TOTAL AMOUNT OF DAMAGES FOR NON-
8 ECONOMIC LOSS RECOVERABLE BY EACH PLAINTIFF AGAINST ALL OF THE
9 GOVERNMENTAL AGENCIES TO WHICH THE LIMITATION OF LIABILITY PRO-
10 VIDED UNDER SUBSECTION (1) APPLIES SHALL NOT EXCEED THE TOTAL
11 AMOUNT PERMITTED UNDER SUBSECTION (1), AS ADJUSTED UNDER
12 SUBSECTION (4).

13 (6) IN AWARDING DAMAGES IN AN ACTION DESCRIBED IN SUBSECTION
14 (1), THE TRIER OF FACT SHALL ITEMIZE THE AMOUNT OF DAMAGES
15 AWARDED FOR ECONOMIC LOSS AND THE AMOUNT OF DAMAGES AWARDED FOR
16 NONECONOMIC LOSS.

17 (7) AS USED IN THIS SECTION:

18 (A) "CONSUMER PRICE INDEX" MEANS THE MOST COMPREHENSIVE
19 INDEX OF CONSUMER PRICES AVAILABLE FOR THIS STATE FROM THE BUREAU
20 OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR.

21 (B) "EMERGENCY OPERATION" MEANS THAT TERM AS DEFINED IN
22 SECTION 2 OF THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT.

23 (C) "EMERGENCY VEHICLE" MEANS THAT TERM AS DEFINED IN
24 SECTION 2 OF THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT.

25 (D) "GOVERNMENTAL AGENCY" MEANS THAT TERM AS DEFINED IN
26 SECTION 1 OF ACT NO. 170 OF THE PUBLIC ACTS OF 1964, BEING
27 SECTION 691.1401 OF THE MICHIGAN COMPILED LAWS, AND INCLUDES AN

1 EMPLOYEE OR AGENT OF A GOVERNMENTAL AGENCY, ACTING WITHIN THE
2 SCOPE OF HIS OR HER EMPLOYMENT OR AGENCY.

3 (E) "GROSS NEGLIGENCE" MEANS THAT TERM AS DEFINED IN
4 SECTION 7 OF ACT NO. 170 OF THE PUBLIC ACTS OF 1964, BEING
5 SECTION 691.1407 OF THE MICHIGAN COMPILED LAWS.

6 (F) "NONECONOMIC LOSS" MEANS THAT TERM AS DEFINED IN
7 SECTION 1483. NONECONOMIC LOSS DOES NOT INCLUDE THE VALUE OF
8 HOMEMAKING SERVICES OR THE CARE OF DEPENDENT FAMILY MEMBERS.

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

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

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

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 at fault and the extent of the causal rela-
22 tion between the conduct and the damages claimed.

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

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

1 (5) The court shall determine the award of damages to each
2 plaintiff in accordance with the findings under subsection (1),
3 subject to any reduction under subsection (6) OR (7), or
4 section 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)~~ (8), a person shall not be required to pay damages
9 in an amount greater than his or her percentage of fault.

10 (6) In an action alleging medical malpractice, the court
11 shall reduce an award of damages in excess of 1 of the limita-
12 tions set forth in section 1483 to the amount of the appropriate
13 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
16 section 1483.

17 (7) THE COURT SHALL REDUCE AN AWARD OF DAMAGES IN EXCESS OF
18 THE LIMITATION SET FORTH IN SECTION 1484. THE JURY SHALL NOT BE
19 ADVISED BY THE COURT OR BY COUNSEL FOR EITHER PARTY OF THE LIMI-
20 TATION SET FORTH IN SECTION 1484.

21 (8) ~~(7)~~ Except as otherwise provided in this subsection
22 and subsection ~~(8)~~ (9), upon motion made not later than 6
23 months after a final judgment is entered, the court shall deter-
24 mine whether all or part of a party's share of the obligation is
25 uncollectible from that party, and shall reallocate any uncol-
26 lectible amount among the other parties according to their
27 respective percentages of fault as determined under subsection

1 (1). A party shall not be required to pay a percentage of any
2 uncollectible amount that exceeds that party's percentage of
3 fault as determined under subsection (1). The party whose
4 liability is reallocated continues to be subject to contribution
5 and to any continuing liability to the plaintiff on the
6 judgment.

7 (9) ~~(8)~~ Notwithstanding subsection ~~(3)~~ (8), a governmen-
8 tal agency, other than a governmental hospital or medical care
9 facility, is not required to pay a percentage of any uncollecti-
10 ble amount that exceeds the governmental agency's percentage of
11 fault as determined under subsection (1).

12 Section 2. This amendatory act shall not take effect unless
13 all of the following bills of the 88th Legislature are enacted
14 into law:

15 (a) Senate Bill No. 66.

16 (b) Senate Bill No. _____ or House Bill No. _____ (request
17 no. 03211'95).