

# HOUSE BILL No. 5546

October 27, 2009, Introduced by Reps. Liss, Lipton, Barnett, Constan, Haugh, Cushingberry, Bettie Scott, Slavens, Switalski, Polidori and Miller and referred to the Committee on Ethics and Elections.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending section 2946a (MCL 600.2946a), as added by 1995 PA 249.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2946a. (1) In an action for product liability, the total  
2       amount of damages for noneconomic loss shall not exceed  
3       \$280,000.00, unless the defect in the product caused either the  
4       person's death or permanent loss of a vital bodily function, in  
5       which case the total amount of damages for noneconomic loss shall  
6       not exceed \$500,000.00. On ~~the effective date of the amendatory act~~  
7       ~~that added this section~~ **MARCH 28, 1996**, the state treasurer shall  
8       adjust the limitations set forth in this subsection so that the  
9       limitations are equal to the limitations provided in section 1483.

1 After that date, the state treasurer shall adjust the limitations  
2 set forth in this subsection at the end of each calendar year so  
3 that they continue to be equal to the limitations provided in  
4 section 1483.

5 (2) In awarding damages in a product liability action, the  
6 trier of fact shall itemize damages into economic and noneconomic  
7 losses. Neither the court nor counsel for a party shall inform the  
8 jury of the limitations under subsection (1). The court shall  
9 adjust an award of noneconomic loss to conform to the limitations  
10 under subsection (1).

11 (3) The limitation on damages under subsection (1) for death  
12 or permanent loss of a vital bodily function does not apply to a  
13 defendant if the trier of fact determines by a ~~perponderance~~  
14 **PREPONDERANCE** of the evidence that the death or loss was the result  
15 of the defendant's gross negligence, or if the court finds that the  
16 matters stated in section 2949a are true.

17 (4) **THE LIMITATIONS ON DAMAGES UNDER SUBSECTION (1) DO NOT**  
18 **APPLY IF THE PRODUCT WAS A PORTABLE DEVICE THAT USES ELECTRO-**  
19 **MUSCULAR DISRUPTION TECHNOLOGY.**

20 (5) ~~(4)~~—If damages for economic loss cannot readily be  
21 ascertained by the trier of fact, ~~then~~—the trier of fact shall  
22 calculate damages for economic loss based on an amount that is  
23 equal to the state average median family income as reported in the  
24 immediately preceding federal decennial census and adjusted by the  
25 state treasurer in the same manner as provided in subsection (1).

26 (6) **AS USED IN THIS SECTION, "DEVICE THAT USES ELECTRO-**  
27 **MUSCULAR DISRUPTION TECHNOLOGY" MEANS THAT TERM AS DEFINED IN**

1 SECTION 224A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.224A.