

SENATE BILL NO. 319

February 17, 1999, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 6304 (MCL 600.6304), as amended by 1995 PA 249, and by adding section 1484.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1484. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (3), (4),
2 AND (5), THE TOTAL AMOUNT OF DAMAGES FOR NONECONOMIC LOSS RECOV-
3 ERABLE BY EACH PLAINTIFF AGAINST A GOVERNMENTAL AGENCY FOR BODILY
4 INJURY OR PROPERTY DAMAGE RESULTING FROM THE NEGLIGENT OPERATION
5 OF A LAW ENFORCEMENT VEHICLE SHALL NOT EXCEED \$1,000,000.00 IF
6 EACH OF THE FOLLOWING CONDITIONS IS MET:

7 (A) AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE
8 BODILY INJURY OR PROPERTY DAMAGE, THE GOVERNMENTAL AGENCY HAD IN
9 EFFECT A LAW ENFORCEMENT VEHICLE PURSUIT AND RESPONSE POLICY

1 CERTIFIED UNDER THE LAW ENFORCEMENT PURSUIT AND RESPONSE POLICY
2 ACT.

3 (B) AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE
4 BODILY INJURY OR PROPERTY DAMAGE, THE LAW ENFORCEMENT VEHICLE WAS
5 ENGAGED IN LAW ENFORCEMENT PURSUIT AND RESPONSE.

6 (C) THE LAW ENFORCEMENT VEHICLE OPERATOR WAS CERTIFIED BY
7 THE GOVERNMENTAL AGENCY AS MEETING THE MINIMUM REQUIREMENTS
8 ESTABLISHED FOR LAW ENFORCEMENT VEHICLE OPERATORS UNDER THE LAW
9 ENFORCEMENT PURSUIT AND RESPONSE POLICY ACT, AND THAT CERTIFICA-
10 TION WAS IN EFFECT AT THE TIME OF THE OCCURRENCE THAT RESULTED IN
11 THE BODILY INJURY OR PROPERTY DAMAGE.

12 (D) DURING THE OCCURRENCE, THE LAW ENFORCEMENT VEHICLE OPER-
13 ATOR WAS IN SUBSTANTIAL COMPLIANCE WITH THE LAW ENFORCEMENT PUR-
14 SUIT AND RESPONSE POLICY ADOPTED BY THE GOVERNMENTAL AGENCY.

15 (2) AN INDIVIDUAL WHO SUSTAINS BODILY INJURY OR PROPERTY
16 DAMAGE ARISING FROM A LAW ENFORCEMENT PURSUIT AND RESPONSE SHALL
17 NOT RECOVER MONEY DAMAGES FROM ANY PERSON FOR THAT BODILY INJURY
18 OR PROPERTY DAMAGE, IF THAT INDIVIDUAL WAS IN VIOLATION OF
19 SECTION 479A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
20 750.479A, OR SECTION 602A OF THE MICHIGAN VEHICLE CODE, 1949 PA
21 300, MCL 257.602A, AT THE TIME OF THE OCCURRENCE GIVING RISE TO
22 THE BODILY INJURY OR PROPERTY DAMAGE. AS USED IN THIS SUBSEC-
23 TION, "PERSON" INCLUDES AN INDIVIDUAL, ASSOCIATION, PARTNERSHIP,
24 CORPORATION, UNIT OF GOVERNMENT, GOVERNMENTAL AGENCY, OR ANY
25 OTHER LEGAL ENTITY.

26 (3) THE LIMITATION OF LIABILITY PRESCRIBED BY SUBSECTION (1)
27 DOES NOT APPLY IF THE TRIER OF FACT DETERMINES THAT THE BODILY

1 INJURY OR PROPERTY DAMAGE RESULTED FROM A GOVERNMENTAL AGENCY'S
2 GROSS NEGLIGENCE. HOWEVER, ALL OF THE FOLLOWING ISSUES ARE QUES-
3 TIONS OF LAW AND MAY BE DECIDED BY THE COURT UPON THE MOTION OF A
4 PARTY AT ANY TIME BEFORE ENTRY OF JUDGMENT:

5 (A) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN
6 THE BODILY INJURY OR PROPERTY DAMAGE, THE GOVERNMENTAL AGENCY HAD
7 IN EFFECT A LAW ENFORCEMENT PURSUIT AND RESPONSE POLICY CERTIFIED
8 UNDER THE LAW ENFORCEMENT PURSUIT AND RESPONSE POLICY ACT.

9 (B) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN
10 THE BODILY INJURY OR PROPERTY DAMAGE, THE LAW ENFORCEMENT VEHICLE
11 WAS ENGAGED IN A LAW ENFORCEMENT PURSUIT AND RESPONSE.

12 (C) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN
13 THE BODILY INJURY OR PROPERTY DAMAGE, THE LAW ENFORCEMENT VEHICLE
14 OPERATOR WAS CERTIFIED BY THE GOVERNMENTAL AGENCY AS MEETING MIN-
15 IMUM REQUIREMENTS ESTABLISHED FOR LAW ENFORCEMENT VEHICLE OPERA-
16 TORS UNDER THE LAW ENFORCEMENT PURSUIT AND RESPONSE POLICY ACT.

17 (D) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN
18 THE BODILY INJURY OR PROPERTY DAMAGE, THE LAW ENFORCEMENT VEHICLE
19 OPERATOR WAS IN SUBSTANTIAL COMPLIANCE WITH THE LAW ENFORCEMENT
20 PURSUIT AND RESPONSE POLICY ADOPTED BY THE GOVERNMENTAL AGENCY.

21 (E) WHETHER THE BODILY INJURY OR PROPERTY DAMAGE SUSTAINED
22 BY THE INDIVIDUAL DESCRIBED IN SUBSECTION (2) RESULTED FROM A
23 GOVERNMENTAL AGENCY'S GROSS NEGLIGENCE.

24 (F) WHETHER THE BODILY INJURY OR PROPERTY DAMAGE SUSTAINED
25 BY THE INDIVIDUAL DESCRIBED IN SUBSECTION (2) AROSE FROM THE
26 INDIVIDUAL'S VIOLATION OF A LAW IDENTIFIED IN SUBSECTION (2).

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) "LAW ENFORCEMENT PURSUIT AND RESPONSE" MEANS THAT TERM
22 AS DEFINED IN SECTION 2 OF THE LAW ENFORCEMENT PURSUIT AND
23 RESPONSE POLICY ACT.

24 (C) "LAW ENFORCEMENT VEHICLE" MEANS THAT TERM AS DEFINED IN
25 SECTION 2 OF THE LAW ENFORCEMENT PURSUIT AND RESPONSE POLICY
26 ACT.

1 (D) "GOVERNMENTAL AGENCY" MEANS THAT TERM AS DEFINED IN
2 SECTION 1 OF 1964 PA 170, MCL 691.1401, AND INCLUDES AN EMPLOYEE
3 OR AGENT OF A GOVERNMENTAL AGENCY, ACTING WITHIN THE SCOPE OF HIS
4 OR HER EMPLOYMENT OR AGENCY.

5 (E) "GROSS NEGLIGENCE" MEANS THAT TERM AS DEFINED IN
6 SECTION 7 OF 1964 PA 170, MCL 691.1407.

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

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

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

18 (b) The percentage of the total fault of all persons that
19 contributed to the death or injury, including each plaintiff and
20 each person released from liability under section 2925d, regard-
21 less of whether the person was or could have been named as a
22 party to the action.

23 (2) In determining the percentages of fault under subsection
24 (1)(b), the trier of fact shall consider both the nature of the
25 conduct of each person at fault and the extent of the causal
26 relation between the conduct and the damages claimed.

1 (3) 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 (5) or section 2955a or
4 6303, and shall enter judgment against each party, including a
5 third-party defendant, except that judgment shall not be entered
6 against a person who has been released from liability as provided
7 in section 2925d.

8 (4) Liability in an action to which this section applies is
9 several only and not joint. Except as otherwise provided in sub-
10 section (6), a person shall not be required to pay damages in an
11 amount greater than his or her percentage of fault as found under
12 subsection (1). This subsection and section 2956 do not apply to
13 a defendant that is jointly and severally liable under section
14 6312.

15 (5) In an action alleging medical malpractice, the court
16 shall reduce an award of damages in excess of 1 of the limita-
17 tions set forth in section 1483 to the amount of the appropriate
18 limitation set forth in section 1483. The jury shall not be
19 advised by the court or by counsel for either party of the limi-
20 tations set forth in section 1483 or any other provision of sec-
21 tion 1483.

22 (6) If an action includes a medical malpractice claim
23 against a person or entity described in section 5838a(1), 1 of
24 the following applies:

25 (a) If the plaintiff is determined to be without fault under
26 subsections (1) and (2), the liability of each defendant is joint

1 and several, whether or not the defendant is a person or entity
2 described in section 5838a(1).

3 (b) If the plaintiff is determined to have fault under sub-
4 sections (1) and (2), upon motion made not later than 6 months
5 after a final judgment is entered, the court shall determine
6 whether all or part of a party's share of the obligation is
7 uncollectible from that party, and shall reallocate any uncol-
8 lectible amount among the other parties, whether or not another
9 party is a person or entity described in section 5838a(1),
10 according to their respective percentages of fault as determined
11 under subsection (1). A party is not required to pay a percen-
12 tage of any uncollectible amount that exceeds that party's per-
13 centage of fault as determined under subsection (1). The party
14 whose liability is reallocated continues to be subject to contri-
15 bution and to any continuing liability to the plaintiff on the
16 judgment.

17 (7) Notwithstanding subsection (6), a governmental agency,
18 other than a governmental hospital or medical care facility, is
19 not required to pay a percentage of any uncollectible amount that
20 exceeds the governmental agency's percentage of fault as deter-
21 mined under subsection (1).

22 (8) THE COURT SHALL REDUCE AN AWARD OF DAMAGES IN EXCESS OF
23 THE LIMITATION SET FORTH IN SECTION 1484. THE JURY SHALL NOT BE
24 ADVISED BY THE COURT OR BY COUNSEL FOR EITHER PARTY OF THE LIMI-
25 TATION SET FORTH IN SECTION 1484.

26 (9) ~~(8)~~ As used in this section, "fault" includes an act,
27 an omission, conduct, including intentional conduct, a breach of

1 warranty, or a breach of a legal duty, or any conduct that could
2 give rise to the imposition of strict liability, that is a proxi-
3 mate cause of damage sustained by a party.

4 Enacting section 1. This amendatory act does not take
5 effect unless Senate Bill No. 320

6 of the 90th Legislature is enacted into law.