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BILL ANALYSIS

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Senate Bill 1115 (as enacted)  
Sponsor: Senator Roger Kahn, M.D.  
Senate Committee: Insurance  
House Committee: Judiciary

**PUBLIC ACT 608 of 2012**

Date Completed: 2-12-13

**CONTENT**

**The bill amends the Revised Judicature Act to establish requirements for the entry of judgments in medical malpractice actions. The requirements include the following:**

- **Past and future economic damages, and future health care costs, must be reduced by collateral source payments.**
- **Past and future noneconomic damages must be reduced by the Act's limits on total noneconomic loss recoverable in medical malpractice actions.**
- **Future economic and noneconomic damages and health care costs must be reduced to gross present cash value.**
- **The total judgment amount must be reduced by the percentage of the plaintiff's fault and, if liability is joint and several, by the amount of all settlements paid by all joint tortfeasors.**
- **When reducing past and future noneconomic damages or the total judgment amount, the court must calculate the ratio of past to future damages and allocate the amounts to be deducted proportionately.**

**The bill also expands the definition of "noneconomic loss".**

The bill will take effect on March 28, 2013, and will apply to only to actions in which

the cause of action arose on or after that date.

Entry of Judgment

Section 6306 of the Act requires the court to enter an order of judgment after a verdict is rendered in favor of a plaintiff by a trier of fact (the judge or jury), and prescribes the order and the amounts in which the order of judgment must be entered. Under the bill, Section 6306 will apply when a verdict is rendered in favor of a plaintiff in a personal injury action *other than* an action for medical malpractice.

The bill adds Section 6306a to govern the entry of an order of judgment after a trier of fact renders a verdict in favor of a plaintiff in a medical malpractice action. Subject to Section 2959 (which requires the court to reduce damages by the percentage of comparative fault of the person who died or was injured), the order of judgment must be entered against each defendant, including a third-party defendant, in the following order and in the following amounts:

- All past economic damages, less collateral source payments as provided in Section 6303.
- All past noneconomic damages, reduced subject to the limitations on noneconomic damages in Section 1483 (described below)
- .All future economic damages, less medical and other health care costs,

and less collateral source payments determined to be collectible under Section 6303, reduced to gross present cash value.

- All future medical and other health care costs, reduced to gross present cash value.
- All future noneconomic damages reduced to gross present cash value and reduced subject to the limitations in Section 1483.
- All taxable and allowable costs, including interest as permitted on the judgment amounts.

(Under Section 6303, in a personal injury action in which the plaintiff seeks to recover for certain expenses or other economic loss, the court must reduce the portion of the judgment that represents damages paid or payable by a collateral source, including benefits from an insurance policy, employee benefits, social security benefits, worker's compensation benefits, and Medicare benefits. Benefits from a collateral source may not be considered payable unless the court determines that there is a previously existing contractual or statutory obligation on the part of the collateral source to pay the benefits.)

The bill requires the court, when reducing past or future noneconomic damages as required by Section 1483, to calculate the ratio of past noneconomic damages to future noneconomic damages and allocate the amounts to be deducted proportionately between the past and future noneconomic damages.

If the plaintiff was assigned a percentage of fault under Section 6304, the bill requires the total judgment amount to be reduced, subject to Section 2959, by the percentage of the plaintiff's fault. When reducing a judgment amount under this provision, the court must determine the ratio of total past damages to total future damages and allocate the amounts to be deducted proportionately between the past and future damages. (Under Section 6304, in an action seeking damages for personal injury, property damage, or wrongful death involving fault of more than one party, the court or the jury must

make findings as to the total amount of each plaintiff's damages and the percentage of the total fault of all people who contributed to the death or injury, including each plaintiff and each person released from liability.)

If liability is determined to be joint and several, the bill requires the total judgment amount determined under Section 6306a to be reduced by the amount of all settlements paid by all joint tortfeasors, including those who were not parties to the action and those who are not licensed health care professionals, licensed health care facilities or agencies, or employees or agents of licensed facilities or agencies. When reducing a judgment amount under this provision, the court must calculate the ratio of total past damages to total future damages awarded by the trier of fact and allocate the amounts to be deducted proportionately between the past and future damages. The court must perform this reduction before awarding any interest permitted by law, but after making all other required adjustments to the verdict, including those required by Sections 6306a and 1483.

As used in Section 6306a, the bill defines "gross present cash value" as the total amount of future damages reduced to present value at a rate of 5% per year, compounded annually, for each year in which the damages will accrue, as found by the trier of fact under Section 6305(1)(b). (That section requires a verdict or judgment in a personal injury action to include specific findings of any future damages and the periods over which they will accrue, on an annual basis, for the following types of future damages: medical and other costs of health care; lost wages or earnings or lost earning capacity and other economic loss; and noneconomic loss.)

#### Noneconomic Loss Limitation

Section 1483 sets a dollar limit on the total amount of damages for noneconomic loss recoverable by all plaintiffs, resulting from the negligence of all defendants in an action for damages alleging medical

malpractice. The section sets a higher limit if one or more of the exceptions specified in the Act apply. (Generally, the exceptions are for certain permanent disabilities.) Under the bill, Section 1483 sets a limit on the total amount of damages recoverable for noneconomic loss resulting from the medical malpractice (rather than the negligence) of all defendants in a claim (rather than an action) for damages alleging medical malpractice.

The dollar limit stated in Section 1483 is \$280,000, or \$500,000 if an exception applies, but the Act requires the State Treasurer to adjust the amounts each year to reflect the cumulative percentage change in the consumer price index. (The current amounts were enacted by Public Act 78 of 1993, which took effect on April 1, 1994. As adjusted, in 2013 the standard limit on noneconomic damages is \$433,400 and, if an exception applies, the limit is \$774,000, according to the Department of Treasury.) The bill continues to refer to the limits of \$280,000 and \$500,000 but requires the State Treasurer to adjust the limits annually beginning April 1, 1994.

As used in Section 1483, "noneconomic loss" means damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, or other noneconomic loss. The bill also includes loss of society and companionship, and loss of consortium.

MCL 600.1483 et al.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.