

SENATE BILL No. 1115

May 3, 2012, Introduced by Senators KAHN, MEEKHOF, MOOLENAAR and SMITH and referred to the Committee on Insurance.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 1483, 2959, 6306, and 6307 (MCL 600.1483, 600.2959, 600.6306, and 600.6307), section 1483 as amended by 1993 PA 78, section 2959 as added and section 6306 as amended by 1995 PA 161, and section 6307 as added by 1986 PA 178, and by adding section 6306a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1483. (1) In an action for damages alleging medical
2 malpractice by or against a person or party, the total amount of
3 damages for noneconomic loss recoverable by all plaintiffs,
4 resulting from the negligence of all defendants, shall not exceed
5 \$280,000.00 unless, as the result of the negligence of 1 or more of
6 the defendants, 1 or more of the following exceptions apply as
7 determined by the court pursuant to section 6304, in which case

1 damages for noneconomic loss shall not exceed \$500,000.00:

2 (a) The plaintiff is hemiplegic, paraplegic, or quadriplegic
3 resulting in a total permanent functional loss of 1 or more limbs
4 caused by 1 or more of the following:

5 (i) Injury to the brain.

6 (ii) Injury to the spinal cord.

7 (b) The plaintiff has permanently impaired cognitive capacity
8 rendering him or her incapable of making independent, responsible
9 life decisions and permanently incapable of independently
10 performing the activities of normal, daily living.

11 (c) There has been permanent loss of or damage to a
12 reproductive organ resulting in the inability to procreate.

13 (2) In awarding damages in an action alleging medical
14 malpractice, the trier of fact shall itemize damages into damages
15 for economic loss and damages for noneconomic loss.

16 (3) As used in this section, "noneconomic loss" means damages
17 or loss due to pain, suffering, inconvenience, physical impairment,
18 OR physical disfigurement, **LOSS OF HOUSEHOLD OR OTHER SERVICES,**
19 **LOSS OF SOCIETY AND COMPANIONSHIP, WHETHER CLAIMED UNDER SECTION**
20 **2922 OR OTHERWISE, LOSS OF CONSORTIUM,** or other noneconomic loss.

21 (4) The state treasurer shall adjust the ~~limitation~~
22 **LIMITATIONS** on damages for noneconomic loss set forth in subsection
23 (1) by ~~an amount~~ **AMOUNTS** determined by the state treasurer at the
24 end of each calendar year to reflect the cumulative annual
25 percentage change in the consumer price index. As used in this
26 subsection, "consumer price index" means the most comprehensive
27 index of consumer prices available for this state from the bureau

1 of labor statistics of the United States department of labor.

2 Sec. 2959. In an action based on tort or another legal theory
3 seeking damages for personal injury, property damage, or wrongful
4 death, the court shall reduce the damages by the percentage of
5 comparative fault of the person upon whose injury or death the
6 damages are based as provided in section 6306 **OR 6306A, AS**
7 **APPLICABLE**. If that person's percentage of fault is greater than
8 the aggregate fault of the other person or persons, whether or not
9 parties to the action, the court shall reduce economic damages by
10 the percentage of comparative fault of the person upon whose injury
11 or death the damages are based as provided in section 6306 **OR**
12 **6306A, AS APPLICABLE**, and noneconomic damages shall not be awarded.

13 Sec. 6306. (1) After a verdict **IS** rendered by a trier of fact
14 in favor of a plaintiff **IN A PERSONAL INJURY ACTION OTHER THAN AN**
15 **ACTION FOR MEDICAL MALPRACTICE**, an order of judgment shall be
16 entered by the court. Subject to section 2959, the order of
17 judgment shall be entered against each defendant, including a
18 third-party defendant, in the following order and in the following
19 judgment amounts:

20 (a) All past economic damages, less collateral source payments
21 as provided for in section 6303.

22 (b) All past noneconomic damages.

23 (c) All future economic damages, less medical and other health
24 care costs, and less collateral source payments determined to be
25 collectible under section 6303(5), reduced to gross present cash
26 value.

27 (d) All future medical and other health care costs reduced to

1 gross present cash value.

2 (e) All future noneconomic damages reduced to gross present
3 cash value.

4 (f) All taxable and allowable costs, including interest as
5 permitted by section 6013 or 6455 on the judgment amounts.

6 (2) As used in this section, "gross present cash value" means
7 the total amount of future damages reduced to present value at a
8 rate of 5% per year, **COMPOUNDED ANNUALLY**, for each year in which
9 those damages **WILL** accrue, as found by the trier of fact ~~as~~
10 ~~provided in~~ **UNDER** section 6305(1)(b).

11 (3) If the plaintiff was assigned a percentage of fault under
12 section 6304, the total judgment amount shall be reduced, subject
13 to section 2959, by an amount equal to the percentage of
14 plaintiff's fault. When reducing the judgment amount as provided in
15 this subsection, the court shall determine the ratio of total past
16 damages to total future damages and shall allocate the amounts to
17 be deducted proportionally between the past and future damages.

18 **SEC. 6306A. (1) AFTER A VERDICT IS RENDERED BY A TRIER OF FACT**
19 **IN FAVOR OF A PLAINTIFF IN A MEDICAL MALPRACTICE ACTION, AN ORDER**
20 **OF JUDGMENT SHALL BE ENTERED BY THE COURT. SUBJECT TO SECTION 2959,**
21 **THE ORDER OF JUDGMENT SHALL BE ENTERED AGAINST EACH DEFENDANT,**
22 **INCLUDING A THIRD-PARTY DEFENDANT, IN THE FOLLOWING ORDER AND IN**
23 **THE FOLLOWING AMOUNTS:**

24 (A) ALL PAST ECONOMIC DAMAGES, LESS COLLATERAL SOURCE PAYMENTS
25 AS PROVIDED IN SECTION 6303.

26 (B) ALL PAST NONECONOMIC DAMAGES, REDUCED SUBJECT TO THE
27 LIMITATIONS IN SECTION 1483. WHEN REDUCING PAST NONECONOMIC DAMAGES

1 AS REQUIRED BY SECTION 1483, THE COURT SHALL CALCULATE THE RATIO OF
2 PAST NONECONOMIC DAMAGES TO FUTURE NONECONOMIC DAMAGES AND SHALL
3 ALLOCATE THE AMOUNTS TO BE DEDUCTED PROPORTIONALLY BETWEEN THE PAST
4 AND FUTURE NONECONOMIC DAMAGES.

5 (C) ALL FUTURE ECONOMIC DAMAGES, LESS MEDICAL AND OTHER HEALTH
6 CARE COSTS, AND LESS COLLATERAL SOURCE PAYMENTS DETERMINED TO BE
7 COLLECTIBLE UNDER SECTION 6303, REDUCED TO GROSS PRESENT CASH
8 VALUE.

9 (D) ALL FUTURE MEDICAL AND OTHER HEALTH CARE COSTS, LESS
10 COLLATERAL SOURCE PAYMENTS DETERMINED TO BE COLLECTIBLE UNDER
11 SECTION 6303, REDUCED TO GROSS PRESENT CASH VALUE.

12 (E) ALL FUTURE NONECONOMIC DAMAGES REDUCED TO GROSS PRESENT
13 CASH VALUE AND REDUCED SUBJECT TO THE LIMITATIONS IN SECTION 1483.
14 WHEN REDUCING FUTURE NONECONOMIC DAMAGES AS REQUIRED BY SECTION
15 1483, THE COURT SHALL CALCULATE THE RATIO OF PAST NONECONOMIC
16 DAMAGES TO FUTURE NONECONOMIC DAMAGES AND SHALL ALLOCATE THE
17 AMOUNTS TO BE DEDUCTED PROPORTIONALLY BETWEEN THE PAST AND FUTURE
18 NONECONOMIC DAMAGES.

19 (F) ALL TAXABLE AND ALLOWABLE COSTS, INCLUDING INTEREST AS
20 PERMITTED BY SECTION 6013 OR 6455 ON THE JUDGMENT AMOUNTS.

21 (2) IF THE PLAINTIFF WAS ASSIGNED A PERCENTAGE OF FAULT UNDER
22 SECTION 6304, THE TOTAL JUDGMENT AMOUNT AS DETERMINED UNDER THIS
23 SECTION SHALL BE REDUCED, SUBJECT TO SECTION 2959, BY THE
24 PERCENTAGE OF PLAINTIFF'S FAULT. WHEN REDUCING A JUDGMENT AMOUNT
25 UNDER THIS SUBSECTION, THE COURT SHALL DETERMINE THE RATIO OF TOTAL
26 PAST DAMAGES TO TOTAL FUTURE DAMAGES AND ALLOCATE THE AMOUNTS TO BE
27 DEDUCTED PROPORTIONALLY BETWEEN THE PAST AND FUTURE DAMAGES.

1 (3) THE TOTAL JUDGMENT AMOUNT DETERMINED UNDER THIS SECTION
2 SHALL BE REDUCED BY THE AMOUNT OF ALL SETTLEMENTS PAID BY ALL JOINT
3 TORTFEASORS, INCLUDING JOINT TORTFEASORS WHO WERE NOT PARTIES TO
4 THE ACTION AND JOINT TORTFEASORS WHO ARE NOT PERSONS DESCRIBED IN
5 SECTION 5838A(1). WHEN REDUCING A JUDGMENT AMOUNT UNDER THIS
6 SUBSECTION, THE COURT SHALL CALCULATE THE RATIO OF TOTAL PAST
7 DAMAGES TO TOTAL FUTURE DAMAGES AWARDED BY THE TRIER OF FACT AND
8 SHALL ALLOCATE THE AMOUNTS TO BE DEDUCTED PROPORTIONALLY BETWEEN
9 THE PAST AND FUTURE DAMAGES. WHEN REDUCING A JUDGMENT AMOUNT UNDER
10 THIS SUBSECTION, THE COURT SHALL PERFORM THE REDUCTION BEFORE
11 AWARDING ANY INTEREST PERMITTED BY LAW, BUT AFTER MAKING ALL OTHER
12 REQUIRED ADJUSTMENTS TO THE VERDICT, INCLUDING THOSE REQUIRED BY
13 THIS SECTION AND BY SECTION 1483.

14 (4) AS USED IN THIS SECTION, "GROSS PRESENT CASH VALUE" MEANS
15 THE TOTAL AMOUNT OF FUTURE DAMAGES REDUCED TO PRESENT VALUE AT A
16 RATE OF 5% PER YEAR, COMPOUNDED ANNUALLY, FOR EACH YEAR IN WHICH
17 THE DAMAGES WILL ACCRUE, AS FOUND BY THE TRIER OF FACT UNDER
18 SECTION 6305(1)(B).

19 Sec. 6307. In an action alleging personal injury, if the
20 amount of future damages, as described in section 6306(1)(c) and
21 (e) OR 6306A(1)(C) AND (E), AS APPLICABLE, in the judgment exceeds
22 \$250,000.00 gross present cash value, as determined under section
23 ~~6306(2)~~, 6306 OR 6306A, AS APPLICABLE, the court shall enter an
24 order that the defendant or the defendant's liability insurance
25 carrier shall satisfy that amount of the judgment, less all costs
26 and attorney fees the plaintiff is obligated to pay, by the
27 purchase of an annuity contract, if all of the following

1 requirements are met:

2 (a) The purchase price of the annuity contract ~~shall be~~ **IS**
3 equal to 100% of the future damages subject to this section, less
4 an amount determined by multiplying the amount of those damages by
5 a percentage equal to the rate of prejudgment interest as
6 calculated under section ~~6013(5)~~ **6013(8)** or section 6455(2) on the
7 date the trial was commenced.

8 (b) The annuity contract is purchased from a life insurer
9 authorized to issue annuity contracts under the insurance code of
10 1956, ~~Act No. 218 of the Public Acts of 1956, being sections~~
11 ~~500.100 to 500.8302 of the Michigan Compiled Laws.~~ **1956 PA 218, MCL**
12 **500.100 TO 500.8302.**