

**REVISED JUDICATURE ACT OF 1961 (EXCERPT)**  
**Act 236 of 1961**

CHAPTER 29  
PROVISIONS CONCERNING SPECIFIC ACTIONS

**600.2901 Actions abolished; alienation of affections, criminal conversation, seduction, and breach of contract to marry.**

Sec. 2901. The following causes of action are abolished:

- (1) alienation of the affections of any person, animal, or thing capable of feeling affection, whatsoever;
- (2) criminal conversation;
- (3) seduction of any person of the age of 18 years or more;
- (4) breach of contract to marry.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2902 Actions abolished; certain real actions.**

Sec. 2902. All writs of right, writs of dower, writs of entry, and writs of assize, all fines and common recoveries, and all other real actions known to the common law, not enumerated and retained in this act, and all writs and other processes heretofore used in real actions, which are not specifically retained in this act, are abolished.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2903 Judgment in tort; renewal; continuance of remedies.**

Sec. 2903. Any judgment in tort heretofore or hereafter rendered and of record in any court of record in this state may be sued on and renewed, within the time and as provided by law, and such renewal judgment or judgments, when obtained, shall likewise be in tort and have the same attributes as the original tort judgment or judgments, with all the rights and remedies of tort judgments attaching thereto.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2904 Repealed. 1964, Act 170, Eff. July 1, 1965.**

**Compiler's note:** The repealed section abolished governmental immunity of political subdivisions in actions arising out of operation of motor vehicles, and provided for payment of premiums on liability insurance.

**600.2905 Civil actions by state; laws applicable.**

Sec. 2905. Every suit or proceeding in a civil cause instituted in the name of the people of this state, by any public officer duly authorized for that purpose, is subject to all the provisions of law respecting similar suits or proceedings, when instituted by or in the name of any citizen, except where provision is or shall be otherwise expressly made by statute.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2906 Confession of judgment.**

Sec. 2906. Judgments may be entered in any circuit court at any time, upon a plea of confession, signed by an attorney of such court, although there is no suit then pending between the parties, if the following provisions are complied with, and not otherwise:

- (1) The authority for confessing such judgment shall be in some proper instrument, distinct from that containing the bond, contract or other evidence of the demand for which such judgment was confessed;
- (2) Such authority shall be produced to the officer signing each judgment, and shall be filed with the clerk of the court in which the judgment shall be entered, at the time of the filing and docketing of such judgment.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2907 Malicious prosecution or action; civil liability, penalty.**

Sec. 2907. Every person who shall, for vexation and trouble or maliciously, cause or procure any other to be arrested, attached, or in any way proceeded against, by any process or civil or criminal action, or in any other manner prescribed by law, to answer to the suit or prosecution of any person, without the consent of such person, or where there is no such person known, shall be liable to the person so arrested, attached or proceeded against, in treble the amount of the damages and expenses which, by any verdict, shall be found to have been sustained and incurred by him; and shall be liable to the person in whose name such arrest or proceeding was had in the sum of \$200.00 damages, and shall be deemed guilty of a misdemeanor, punishable on conviction by imprisonment in the county jail for a term not exceeding 6 months.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2907a Violation of MCL 565.25; liability to owner of encumbered property; penalty.**

Sec. 2907a. (1) A person who violates section 25 of chapter 65 of the Revised Statutes of 1846, being section 565.25 of the Michigan Compiled Laws, by encumbering property through the recording of a document without lawful cause with the intent to harass or intimidate any person is liable to the owner of the property encumbered for all of the following:

(a) All of the costs incurred in bringing an action under section 25 of chapter 65 of the Revised Statutes of 1846, including actual attorney fees.

(b) All damages the owner of the property may have sustained as a result of the filing of the encumbrance.

(c) Exemplary damages.

(2) A person who violates section 25 of chapter 65 of the Revised Statutes of 1846, by encumbering property through the recording of a document without lawful cause with the intent to harass or intimidate any person is guilty of a felony punishable by imprisonment for not more than 3 years or a fine of not more than \$5,000.00, or both.

**History:** Add. 1996, Act 527, Eff. Mar. 31, 1997.

**600.2908 Repealed. 1972, Act 284, Eff. Jan. 1, 1973.**

**Compiler's note:** The repealed section pertained to civil actions against stockholders for labor performed for the corporation.

**600.2909 Stockholders; individual liability for corporate debts; enforcement; labor debts.**

Sec. 2909. Whenever any stockholders are individually liable for the debts of a corporation the remedy for the enforcement of their liability shall be as prescribed by the court rules and not otherwise. This section does not apply to actions for labor performed when the action is brought by the person who performed the labor or his assignees.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2910 Action for seduction.**

Sec. 2910. Actions for seduction are subject to the following provisions and limitations:

(1) In any action for seduction it is necessary to allege and prove that the female seduced was not 18 years of age or over at the time of the seduction.

(2) In any action for seduction it is not necessary to allege or prove any loss of services in consequence of the seduction.

(3) An action for seduction may be brought by the seduced female's mother, father, or guardian.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2911 Action for libel or slander.**

Sec. 2911. (1) Words imputing a lack of chastity to any female or male are actionable in themselves and subject the person who uttered or published them to a civil action for the slander in the same manner as the uttering or publishing of words imputing the commission of a criminal offense.

(2)(a) Except as provided in subdivision (b), in actions based on libel or slander the plaintiff is entitled to recover only for the actual damages which he or she has suffered in respect to his or her property, business, trade, profession, occupation, or feelings.

(b) Exemplary and punitive damages shall not be recovered in actions for libel unless the plaintiff, before instituting his or her action, gives notice to the defendant to publish a retraction and allows a reasonable time to do so, and proof of the publication or correction shall be admissible in evidence under a denial on the question of the good faith of the defendant, and in mitigation and reduction of exemplary or punitive damages. For libel based on a radio or television broadcast, the retraction shall be made in the same manner and at the same time of the day as the original libel; for libel based on a publication, the retraction shall be published in the same size type, in the same editions and as far as practicable, in substantially the same position as the original libel; and for other libel, the retraction shall be published or communicated in substantially the same manner as the original libel.

(3) If the defendant in any action for slander or libel gives notice in a justification that the words spoken or published were true, this notice shall not be of itself proof of the malice charged in the complaint though not sustained by the evidence. In an action for slander or for publishing or broadcasting a libel even though the defendant has pleaded or attempted to prove a justification he or she may prove mitigating circumstances including the sources of his or her information and the ground for his or her belief. Damages shall not be awarded in a libel action for the publication or broadcast of a fair and true report of matters of public record, a public and official proceeding, or of a governmental notice, announcement, written or recorded report or

record generally available to the public, or act or action of a public body, or for a heading of the report which is a fair and true headnote of the report. This privilege shall not apply to a libel which is contained in a matter added by a person concerned in the publication or contained in the report of anything said or done at the time and place of the public and official proceeding or governmental notice, announcement, written or recorded report or record generally available to the public, or act or action of a public body, which was not a part of the public and official proceeding or governmental notice, announcement, written or recorded report or record generally available to the public, or act or action of a public body.

(4) A person against whom a judgment is recovered for damages arising out of the authorship or publication of a libel is entitled to recover contribution in a civil action from all persons who were originally jointly liable for the libel with the defendant or defendants, whether joined as defendants or not, to the same extent as and with the same effect that joint sureties are liable to contribute to each other in cases where they are sureties on the same contract. If the libel has been published in a newspaper, magazine, or other periodical publication or by a radio or television broadcast, the servants and agents of the publisher or proprietor of the periodical or radio or television station or network, and the news agents and other persons who have been connected with the libel only by selling or distributing the publication containing the libel and who have not acted maliciously in selling or publishing the libel, shall not be required to contribute and shall not be taken into account in determining the amount that any joint tortfeasor is required to contribute under the provisions of this section. If the author of the libel acted maliciously in composing or securing the printing or the publication of the libel and the printer, publisher, or distributor of the libel acted in good faith and without malice in printing and publishing the libel, the author of the libel is liable in a civil action to that printer, publisher, or distributor for the entire amount of the damages which are recovered against and paid by that printer, publisher, or distributor.

(5) In actions brought for the recovery of damages for libel in this state, it is competent for the defendant or defendants in the action to show in evidence upon the trial of the action that the plaintiff in the action has previously recovered a judgment for damages in an action for libel to the same or substantially the same purport or effect as the libel for the recovery of damages for which the action has been brought, or that the plaintiff in the action has previously brought an action for the libel or has received or agreed to receive compensation for the libel.

(6) An action for libel or slander shall not be brought based upon a communication involving public officials or public figures unless the claim is sustained by clear and convincing proof that the defamatory falsehood was published with knowledge that it was false or with reckless disregard of whether or not it was false.

(7) An action for libel or slander shall not be brought based upon a communication involving a private individual unless the defamatory falsehood concerns the private individual and was published negligently. Recovery under this provision shall be limited to economic damages including attorney fees.

(8) As used in this section, "libel" includes defamation by a radio or television broadcast.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1988, Act 396, Eff. Jan. 1, 1989.

**Constitutionality:** A communication is not constitutionally privileged if its subject involves a private person in the context of a matter of public interest. Rouch v Enquirer & News of Battle Creek, 427 Mich 157; 398 NW2d 245 (1986).

#### **600.2912 Actions for malpractice; member of state licensed profession.**

Sec. 2912. (1) A civil action for malpractice may be maintained against any person professing or holding himself out to be a member of a state licensed profession. The rules of the common law applicable to actions against members of a state licensed profession, for malpractice, are applicable against any person who holds himself out to be a member of a state licensed profession.

(2) Malpractice may be given in evidence in defense to any action for services rendered by the member of a state licensed profession, or person holding himself out to be a member of a state licensed profession.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.2912a Action alleging malpractice; burden of proof.**

Sec. 2912a. (1) Subject to subsection (2), in an action alleging malpractice, the plaintiff has the burden of proving that in light of the state of the art existing at the time of the alleged malpractice:

(a) The defendant, if a general practitioner, failed to provide the plaintiff the recognized standard of acceptable professional practice or care in the community in which the defendant practices or in a similar community, and that as a proximate result of the defendant failing to provide that standard, the plaintiff suffered an injury.

(b) The defendant, if a specialist, failed to provide the recognized standard of practice or care within that specialty as reasonably applied in light of the facilities available in the community or other facilities

reasonably available under the circumstances, and as a proximate result of the defendant failing to provide that standard, the plaintiff suffered an injury.

(2) In an action alleging medical malpractice, the plaintiff has the burden of proving that he or she suffered an injury that more probably than not was proximately caused by the negligence of the defendant or defendants. In an action alleging medical malpractice, the plaintiff cannot recover for loss of an opportunity to survive or an opportunity to achieve a better result unless the opportunity was greater than 50%.

**History:** Add. 1977, Act 272, Eff. Mar. 30, 1978;—Am. 1993, Act 78, Eff. Apr. 1, 1994.

**600.2912b Action alleging medical malpractice; notice; mailing; notice period; statement; access to medical records; tacking successive notice periods; response; failure to receive response; health professional or facility not intending to settle.**

Sec. 2912b. (1) Except as otherwise provided in this section, a person shall not commence an action alleging medical malpractice against a health professional or health facility unless the person has given the health professional or health facility written notice under this section not less than 182 days before the action is commenced.

(2) The notice of intent to file a claim required under subsection (1) shall be mailed to the last known professional business address or residential address of the health professional or health facility who is the subject of the claim. Proof of the mailing constitutes prima facie evidence of compliance with this section. If no last known professional business or residential address can reasonably be ascertained, notice may be mailed to the health facility where the care that is the basis for the claim was rendered.

(3) The 182-day notice period required in subsection (1) is shortened to 91 days if all of the following conditions exist:

(a) The claimant has previously filed the 182-day notice required in subsection (1) against other health professionals or health facilities involved in the claim.

(b) The 182-day notice period has expired as to the health professionals or health facilities described in subdivision (a).

(c) The claimant has filed a complaint and commenced an action alleging medical malpractice against 1 or more of the health professionals or health facilities described in subdivision (a).

(d) The claimant did not identify, and could not reasonably have identified a health professional or health facility to which notice must be sent under subsection (1) as a potential party to the action before filing the complaint.

(4) The notice given to a health professional or health facility under this section shall contain a statement of at least all of the following:

(a) The factual basis for the claim.

(b) The applicable standard of practice or care alleged by the claimant.

(c) The manner in which it is claimed that the applicable standard of practice or care was breached by the health professional or health facility.

(d) The alleged action that should have been taken to achieve compliance with the alleged standard of practice or care.

(e) The manner in which it is alleged the breach of the standard of practice or care was the proximate cause of the injury claimed in the notice.

(f) The names of all health professionals and health facilities the claimant is notifying under this section in relation to the claim.

(5) Within 56 days after giving notice under this section, the claimant shall allow the health professional or health facility receiving the notice access to all of the medical records related to the claim that are in the claimant's control, and shall furnish releases for any medical records related to the claim that are not in the claimant's control, but of which the claimant has knowledge. Subject to section 6013(9), within 56 days after receipt of notice under this section, the health professional or health facility shall allow the claimant access to all medical records related to the claim that are in the control of the health professional or health facility. This subsection does not restrict a health professional or health facility receiving notice under this section from communicating with other health professionals or health facilities and acquiring medical records as permitted in section 2912f. This subsection does not restrict a patient's right of access to his or her medical records under any other provision of law.

(6) After the initial notice is given to a health professional or health facility under this section, the tacking or addition of successive 182-day periods is not allowed, irrespective of how many additional notices are subsequently filed for that claim and irrespective of the number of health professionals or health facilities notified.

(7) Within 154 days after receipt of notice under this section, the health professional or health facility

against whom the claim is made shall furnish to the claimant or his or her authorized representative a written response that contains a statement of each of the following:

- (a) The factual basis for the defense to the claim.
- (b) The standard of practice or care that the health professional or health facility claims to be applicable to the action and that the health professional or health facility complied with that standard.
- (c) The manner in which it is claimed by the health professional or health facility that there was compliance with the applicable standard of practice or care.
- (d) The manner in which the health professional or health facility contends that the alleged negligence of the health professional or health facility was not the proximate cause of the claimant's alleged injury or alleged damage.

(8) If the claimant does not receive the written response required under subsection (7) within the required 154-day time period, the claimant may commence an action alleging medical malpractice upon the expiration of the 154-day period.

(9) If at any time during the applicable notice period under this section a health professional or health facility receiving notice under this section informs the claimant in writing that the health professional or health facility does not intend to settle the claim within the applicable notice period, the claimant may commence an action alleging medical malpractice against the health professional or health facility, so long as the claim is not barred by the statute of limitations.

**History:** Add. 1993, Act 78, Eff. Apr. 1, 1994.

#### **600.2912c Action alleging medical malpractice; filing affidavit certifying noninvolvement; dismissal of claim; reinstatement of party; discovery.**

Sec. 2912c. (1) In an action alleging medical malpractice, a party named as a defendant in the action may, instead of answering or otherwise pleading, file with the court an affidavit certifying that he or she was not involved, either directly or indirectly, in the occurrence alleged in the action. Unless the affidavit is opposed pursuant to subsection (2), the court shall order the dismissal of the claim, without prejudice, against the affiant.

(2) Any party to the action may oppose the dismissal or move to vacate an order of dismissal and reinstate the party who filed the affidavit if it can be shown that the party filing the affidavit was involved in the occurrence alleged in the action. Reinstatement of a party to the action under this subdivision shall not be barred by any statute of limitations defense that was not valid at the time the action was originally commenced against the affiant. The opposing party may obtain discovery regarding the involvement or noninvolvement of the party filing the affidavit. The discovery shall be completed within 90 days after the date the affidavit is filed.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

“(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

“(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

“(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

“(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”

#### **600.2912d Action alleging medical malpractice; complaint to be accompanied by affidavit of merit; filing extension; failure to allow access to medical records.**

Sec. 2912d. (1) Subject to subsection (2), the plaintiff in an action alleging medical malpractice or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169. The affidavit of merit shall certify that the health professional has reviewed the notice and all medical records supplied to him or her by the plaintiff's attorney concerning the allegations contained in the notice and shall contain a statement of each of the following:

- (a) The applicable standard of practice or care.
- (b) The health professional's opinion that the applicable standard of practice or care was breached by the



health professional or health facility receiving the notice.

(c) The actions that should have been taken or omitted by the health professional or health facility in order to have complied with the applicable standard of practice or care.

(d) The manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the notice.

(2) Upon motion of a party for good cause shown, the court in which the complaint is filed may grant the plaintiff or, if the plaintiff is represented by an attorney, the plaintiff's attorney an additional 28 days in which to file the affidavit required under subsection (1).

(3) If the defendant in an action alleging medical malpractice fails to allow access to medical records within the time period set forth in section 2912b(6), the affidavit required under subsection (1) may be filed within 91 days after the filing of the complaint.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986;—Am. 1993, Act 78, Eff. Apr. 1, 1994.

**Compiler's note:** In subsection (3), the reference to "section 2912b(6)" evidently should be to section 2912b(5).  
Section 3 of Act 178 of 1986 provides:

"(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

"(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

"(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

"(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

"(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."

#### **600.2912e Action alleging medical malpractice; filing answer to complaint; filing affidavit of meritorious defense; failure to allow access to medical records.**

Sec. 2912e. (1) In an action alleging medical malpractice, within 21 days after the plaintiff has filed an affidavit in compliance with section 2912d, the defendant shall file an answer to the complaint. Subject to subsection (2), the defendant or, if the defendant is represented by an attorney, the defendant's attorney shall file, not later than 91 days after the plaintiff or the plaintiff's attorney serves the affidavit required under section 2912d, an affidavit of meritorious defense signed by a health professional who the defendant's attorney reasonably believes meets the requirements for an expert witness under section 2169. The affidavit of meritorious defense shall certify that the health professional has reviewed the complaint and all medical records supplied to him or her by the defendant's attorney concerning the allegations contained in the complaint and shall contain a statement of each of the following:

(a) The factual basis for each defense to the claims made against the defendant in the complaint.

(b) The standard of practice or care that the health professional or health facility named as a defendant in the complaint claims to be applicable to the action and that the health professional or health facility complied with that standard.

(c) The manner in which it is claimed by the health professional or health facility named as a defendant in the complaint that there was compliance with the applicable standard of practice or care.

(d) The manner in which the health professional or health facility named as a defendant in the complaint contends that the alleged injury or alleged damage to the plaintiff is not related to the care and treatment rendered.

(2) If the plaintiff in an action alleging medical malpractice fails to allow access to medical records as required under section 2912b(5), the affidavit required under subsection (1) may be filed within 91 days after filing an answer to the complaint.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986;—Am. 1993, Act 78, Eff. Apr. 1, 1994;—Am. 2012, Act 609, Eff. Mar. 28, 2013.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

"(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

"(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

"(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

"(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after

January 1, 1987.

"(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."

Enacting section 1 of Act 609 of 2012 provides:

"Enacting section 1. Sections 2912e, 5852, and 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2912e, 600.5852, and 600.6013, as amended by this amendatory act apply only to actions in which the cause of action arose on or after the effective date of this amendatory act."

#### **600.2912f Waiver of privilege; permissible communication; disclosure not as violation of law.**

Sec. 2912f. (1) A person who has given notice under section 2912b or who has commenced an action alleging medical malpractice waives for purposes of that claim or action the privilege created by section 2157 and any other similar privilege created by law with respect to a person or entity who was involved in the acts, transactions, events, or occurrences that are the basis for the claim or action or who provided care or treatment to the claimant or plaintiff in the claim or action for that condition or a condition related to the claim or action either before or after those acts, transactions, events, or occurrences, whether or not the person is a party to the claim or action.

(2) Pursuant to subsection (1), a person or entity who has received notice under section 2912b or who has been named as a defendant in an action alleging medical malpractice or that person's or entity's attorney or authorized representative may communicate with a person specified in section 5838a in order to obtain all information relevant to the subject matter of the claim or action and to prepare the person's or entity's defense to the claim or action.

(3) A person who discloses information under subsection (2) to a person or entity who has received notice under section 2912b or to a person or entity who has been named as a defendant in an action alleging medical malpractice or to the person's or entity's attorney or authorized representative does not violate section 2157 or any other similar duty or obligation created by law and owed to the claimant or plaintiff.

**History:** Add. 1993, Act 78, Eff. Apr. 1, 1994.

#### **600.2912g Arbitration.**

Sec. 2912g. (1) Subject to subsection (2), at any time after notice is given as required under section 2912b, if the total amount of damages claimed is \$75,000.00 or less, including interest and costs, all claimants and all health professionals or health facilities notified under section 2912b may agree in writing to submit the claim stated in the notice to binding arbitration. An arbitration agreement entered into under this subsection shall contain at least all of the following provisions:

- (a) A process for the selection of an arbitrator.
- (b) An agreement to apportion the costs of the arbitration.
- (c) A waiver of the right to trial.
- (d) A waiver of the right to appeal.

(2) The claimants giving notice and the health professionals or health facilities receiving notice under section 2912b may agree in writing to a total amount of damages greater than the limit set forth in subsection (1).

(3) Arbitration conducted under this section is binding as to all parties who have entered into the written agreement described in subsection (1). Arbitration under this section shall be summary in nature and shall be conducted as follows:

(a) The proceeding shall be conducted by a single arbitrator chosen by agreement of all parties to the claim.

(b) There shall be no live testimony of parties or witnesses.

(c) The Michigan general court rules pertaining to discovery are not applicable except that all of the following information shall be disclosed and exchanged between the parties upon written request of a party:

(i) All relevant medical records or medical authorizations sufficient to enable the procurement of all relevant medical records.

(ii) An expert witness report or statement, but only if the party procuring the expert witness report or statement intends to or does furnish the expert witness report or statement to the arbitrator for consideration.

(iii) Relevant published works, medical texts, and scientific and medical literature.

(iv) A concise written summary prepared by a party or the party's representative setting forth that party's factual and legal position on the damages claimed.

(v) Other information considered by the party making the request to be relevant to the claim or a defense to the claim.

(d) The arbitrator shall conduct 1 or more prehearing telephone conference calls or meetings with the parties or, if a party is represented by an attorney, the party's attorney, for the purpose of establishing the

orderly request for and exchange of information described in this subsection, and any other advance disclosure of information considered reasonable and necessary in the arbitrator's sole discretion. The arbitrator shall set deadlines for the exchange or advance disclosure of information under this subsection including, but not limited to, the concise written summary required under subdivision (c)(iv).

(e) The arbitrator may issue his or her decision without holding a formal hearing based solely upon his or her review of the materials furnished by the parties under this section. In his or her sole discretion and whether or not requested to do so by a party, the arbitrator may hold a hearing. A hearing held under this subdivision is limited solely to the presentation of oral arguments, subject to time limitations set by the arbitrator.

(f) A written agreement to submit the claim to binding arbitration under this section is binding on each party signing the agreement and on their representatives, insurers, and heirs. An arbitration agreement under this section signed on behalf of a minor or a person who is otherwise incompetent is enforceable and is not subject to disaffirmance or disavowal, if the minor or incompetent person was represented by an attorney at the time the written agreement was executed.

(g) The arbitrator shall issue a written decision that states at a minimum the factual basis for the decision and the dollar amount of the award. The arbitrator shall not include costs, interest, or attorney fees in an award. A party may submit an award by an arbitrator under this section to a court of competent jurisdiction for entry of judgment on and enforcement of the award.

(4) An arbitration award under this section is not subject to appeal.

**History:** Add. 1993, Act 78, Eff. Apr. 1, 1994.

#### **600.2912h Settlement agreement.**

Sec. 2912h. (1) If the plaintiff in an action alleging medical malpractice enters into a settlement agreement with a defendant concerning the action, whether or not the settlement agreement was entered into under court supervision, and the defendant is licensed or registered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, the plaintiff's attorney and the defendant's attorney or, if the plaintiff and the defendant are not represented by attorneys, the plaintiff and the defendant shall jointly file a complete written copy of the settlement agreement with the bureau within the department of commerce responsible for health occupations licensure, registration, and discipline, within 30 days after entering into the settlement agreement.

(2) Information filed with the department of commerce under subsection (1) is confidential except for use by the department of commerce in an investigation and is not subject to disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** Add. 1993, Act 78, Eff. Apr. 1, 1994.

#### **600.2913 Minor maliciously or wilfully destroying property or causing bodily harm or injury to person; recovery of damages from parents.**

Sec. 2913. A municipal corporation, county, township, village, school district, department of the state, person, partnership, corporation, association, or an incorporated or unincorporated religious organization may recover damages in an amount not to exceed \$2,500.00 in a civil action in a court of competent jurisdiction against the parents or parent of an unemancipated minor, living with his or her parents or parent, who has maliciously or wilfully destroyed real, personal, or mixed property which belongs to the municipal corporation, county, township, village, school district, department of the state, person, partnership, corporation, association, or religious organization incorporated or unincorporated or who has maliciously or wilfully caused bodily harm or injury to a person.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1962, Act 23, Eff. Mar. 28, 1963;—Am. 1967, Act 184, Eff. July 1, 1968;—Am. 1972, Act 87, Imd. Eff. Mar. 20, 1972;—Am. 1978, Act 577, Imd. Eff. Jan. 2, 1979.

#### **600.2914 Discharge in bankruptcy; cancellation of judgment, procedure; notice to judgment creditor; judgments from other states; "judgment" defined; judgments under MCL 257.513.**

Sec. 2914. After a bankrupt has been discharged from his debts pursuant to the federal laws relating to bankruptcy, the bankrupt, his receiver, his trustee, or any other interested person or corporation may apply to have a judgment debt canceled and discharged of record upon proof of the bankrupt's discharge. Application for equitable relief shall be made to the court in which the judgment was rendered against the bankrupt, or if it was rendered in a court not of record, application shall be made to the court in which it became a judgment by docketing. If it appears upon the hearing that he has been discharged from the payment of that judgment or the debt upon which that judgment was recovered, an order shall be made directing that the judgment be



canceled and discharged of record. This order shall recite that the judgment is canceled and discharged because of the bankrupt's discharge in bankruptcy. The clerk of the court shall then discharge the judgment by marking on the docket that the judgment is canceled and discharged by order of the court because of the defendant's discharge in bankruptcy, and the clerk shall mark the date and entry of the order of discharge.

(1) Notice of the application, accompanied by copies of the papers on which it is based, must be served on the judgment creditor or his attorney of record in the judgment, if the residence or place of business of either the creditor or his attorney of record is known, at least 30 days prior to the date of the hearing of the application. Upon proof by affidavit that the residences and places of business of both are unknown and after due diligence cannot be ascertained or upon proof by affidavit that the creditor is not a resident of this state and his attorney is dead or removed from this state or cannot be found within this state, the judge of the court before which the application is pending may make an order that the notice of the application be published once a week for 3 successive weeks in the newspaper that he shall designate. This publication shown by affidavit of the publisher shall be sufficient service of the application upon the judgment creditor.

(2) No action or proceeding shall be prosecuted in any of the courts of this state to enforce any judgment rendered in any court of any other state of the United States which would be subject to cancellation and discharge under the provisions of this section had the judgment been rendered by a court of this state.

(3) The word judgment as used in this section is here defined to include any decree or order for the payment of money dischargeable pursuant to the federal law relating to bankruptcy.

(4) Nothing contained in this section shall be deemed to supersede or abrogate the provisions of section 513 of Act No. 300 of the Public Acts of 1949, as amended, being section 257.513 of the Compiled Laws of 1948.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1962, Act 187, Imd. Eff. May 24, 1962.

#### **600.2915 Actions for taxes due other states; reciprocity.**

Sec. 2915. Any state of the United States of America or any political subdivision of any state of the United States has the right to sue in the courts of Michigan to recover any tax which may be owing it, whether or not the tax has been reduced to judgment, when the like right is accorded to the state of Michigan and its political subdivisions by that state, whether the right is granted by statutory authority or as a matter of comity. The attorney general and the appropriate legal officers of the political subdivisions of this state are empowered to bring actions in the courts of other states to collect taxes legally due this state or its political subdivisions.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.2916 Lethal gases for fumigation; liability; damages; means of ingress; locking; posting; permission to enter; notice; violation as felony; penalty.**

Sec. 2916. (1) Any person who uses any substance which, by itself or in combination with any other substance, emits or liberates a gas, fume or vapor, which gas, fume, vapor or substances when liberated and used for the destruction or control of insects, termites, vermin, rodents, or other structural pests, is lethal, poisonous, noxious or dangerous to human life, in violation of the provisions of this section, is liable to any person or persons injured or killed for damages to be recovered in an action by such person or the estate of such person. The amount of damages shall be determined by a jury as in other cases, or by the court in case a jury is waived by the parties.

(2) Any person who uses any of the substances outlined in (1) of this section shall lock all means of ingress to the building or structure in which such substance has been used for a period of not less than 12 hours, and shall post such means of ingress with a visible warning notice stating that poisonous substances have been used and no entrance in the building shall be made without the written permission of the county sheriff or of the police or fire authorities of the city, village or township in which the building is situated for at least 48 hours from the time of using such poisonous substances.

(3) Any person using any substance outlined in (1) of this section shall notify the county sheriff or the police and fire authorities of the city, village or township in which the building or structure is situated that such substance has been used in the building, that the proper warning notices have been placed at all means of ingress in the building or structure, and that entrance into the building or structure is dangerous to human life for at least 48 hours, and such person is responsible for inspection of such building or structure at the end of the 48-hour period to determine the suitability for human habitation.

(4) Any person who violates the provisions of this section, in addition to civil liability for damages, is guilty of a felony and, upon conviction thereof, shall be punished as provided in the laws of this state.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.2917 Liability of library, merchant, agent, or independent contractor for conduct**

**involving person suspected of larceny of goods or library materials, or of violating MCL 750.356c or MCL 750.356d; definitions.**

Sec. 2917. (1) In a civil action against a library or merchant, an agent of the library or merchant, or an independent contractor providing security for the library or merchant for false imprisonment, unlawful arrest, assault, battery, libel, or slander, if the claim arises out of conduct involving a person suspected of removing or of attempting to remove, without right or permission, goods held for sale in a store from the store or library materials from a library, or of violating section 356c or 356d of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.356c and 750.356d of the Michigan Compiled Laws, and if the merchant, library, agent, or independent contractor had probable cause for believing and did believe that the plaintiff had committed or aided or abetted in the larceny of goods held for sale in the store, or of library materials, or in the violation of section 356c or 356d of Act No. 328 of the Public Acts of 1931, damages for or resulting from mental anguish or punitive, exemplary, or aggravated damages shall not be allowed a plaintiff, unless it is proved that the merchant, library, agent, or independent contractor used unreasonable force, detained the plaintiff an unreasonable length of time, acted with unreasonable disregard of the plaintiff's rights or sensibilities, or acted with intent to injure the plaintiff.

(2) As used in this section:

(a) "Library" includes a public library; a library of an educational, historical, or eleemosynary institution or organization; a museum; an archive; and a repository of public records or historical records, or both.

(b) "Library material" includes a plate; picture; photograph; engraving; painting; drawing; map; newspaper; book; magazine; pamphlet; broadside; manuscript; document; letter; public record; microfilm; sound recording; audiovisual material; magnetic or other tape; optical storage disc or other recording medium; electronic data processing record; artifact; and other documentary, written, or printed material.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1983, Act 223, Imd. Eff. Nov. 28, 1983;—Am. 1988, Act 50, Eff. June 1, 1988;—Am. 1992, Act 192, Imd. Eff. Oct. 5, 1992.

**600.2917a Detention of individual believed by owner or lessee of theatrical facility to have violated MCL 750.465a.**

Sec. 2917a. The owner or lessee of a theatrical facility where a motion picture is being exhibited or the authorized agent or employee of the owner or lessee who alerts a law enforcement agency of an alleged violation of section 465a of the Michigan penal code, 1931 PA 328, MCL 750.465a, and who takes measures, while awaiting the arrival of law enforcement authorities, to detain an individual who the owner, lessee, agent, or employee has probable cause to believe committed the violation is not liable in a civil action arising out of the measures taken unless the plaintiff shows that 1 or both of the following apply:

(a) The measures taken were unreasonable.

(b) The period of detention was unreasonably long.

**History:** Add. 2004, Act 451, Eff. Mar. 28, 2005.

**600.2918 Damages for forcible entry and detainer; damages for unlawful interference with possessory interest; exceptions; opening of probate estate; forcible entry or possession by occupant; action for possession; claim for injunctive relief; joinder; waiver; commencement of action; limitations; "owner" defined.**

Sec. 2918. (1) Any person who is ejected or put out of any lands or tenements in a forcible and unlawful manner, or being out is afterwards held and kept out, by force, is entitled to recover 3 times the amount of his or her actual damages or \$200.00, whichever is greater, in addition to recovering possession.

(2) Any tenant in possession of premises whose possessory interest has been unlawfully interfered with by the owner is entitled to recover the amount of his or her actual damages or \$200.00, whichever is greater, for each occurrence and, if possession has been lost, to recover possession. Subject to subsection (3), unlawful interference with a possessory interest includes 1 or more of the following:

(a) Use of force or threat of force.

(b) Removal, retention, or destruction of personal property of the possessor.

(c) Changing, altering, or adding to the locks or other security devices on the property without immediately providing keys or other unlocking devices to the person in possession.

(d) Boarding of the premises that prevents or deters entry.

(e) Removal of doors, windows, or locks.

(f) Causing, by action or omission, the termination or interruption of a service procured by the tenant or that the landlord is under an existing duty to furnish, which service is so essential that its termination or interruption would constitute constructive eviction, including heat, running water, hot water, electric, or gas service.

- (g) Introduction of noise, odor, or other nuisance.
- (3) An owner's actions do not unlawfully interfere with a possessory interest if any of the following apply:
  - (a) The owner acts pursuant to court order.
  - (b) The owner interferes temporarily with possession only as necessary to make needed repairs or inspection and only as provided by law.
  - (c) The owner, or a court officer appointed by or a bailiff of the court that issued the court order or the sheriff or a deputy sheriff of the county in which the court is located, believes in good faith that the tenant has abandoned the premises, and after diligent inquiry has reason to believe the tenant does not intend to return, and current rent is not paid.
  - (d) All of the following requirements are met:
    - (i) The owner informed the tenant in writing of the tenant's option to provide contact information for an authorized person the owner could contact in the event of the tenant's death. The owner is not responsible for incorrect contact information provided by the tenant or for the tenant's failure to provide contact information.
    - (ii) Current rent has not been paid.
    - (iii) The owner believes in good faith that the tenant has been deceased for at least 18 days and that there is not a surviving tenant.
    - (iv) After the requirements of subparagraph (iii) are met and not less than 10 days before the owner reenters to take possession of the premises and dispose of its contents, each of the following occurs:
      - (A) If the tenant provided contact information under subparagraph (i), the owner makes a reasonable attempt to contact the authorized person using the contact information provided and to request him or her to open a probate estate for the tenant within 28 days after the tenant's death. The owner is not responsible for the authorized person's failure to respond to the notification before the owner's reentry into the premises.
      - (B) The owner places on the door of the premises a notice indicating the owner's intent to reenter, take possession of the premises, and dispose of its contents after 10 days have elapsed.
      - (C) The owner notifies the public administrator for the county where the premises are located or, if none, the state public administrator that the owner believes that the tenant is deceased and intends to reenter to take possession of the premises and dispose of its contents if a probate estate is not opened. On request by the public administrator before the 10-day period under this subparagraph has elapsed and presentation to the owner of proper credentials and identification, the owner shall give the public administrator access to the premises.
      - (v) A probate estate has not been opened for the deceased tenant by the public administrator, authorized contact person, or any other person in the county in which the premises are located and the owner has not been notified in writing of the existence of a probate estate opened in another county and of the name and address of the personal representative.
  - (4) The opening of a probate estate by a public administrator under subsection (3) is at the sole discretion and must be at the sole expense of the public administrator.
  - (5) An owner's actions do not unlawfully interfere with an occupant's possession of premises if the occupant took possession by means of a forcible entry, holds possession by force, or came into possession by trespass without color of title or other possessory interest.
  - (6) A person who has lost possession or whose possessory interest has been unlawfully interfered with may, if that person does not peacefully regain possession, bring an action for possession under section 5714(1)(f) or bring a claim for injunctive relief in the appropriate circuit court. A claim for damages under this section may be joined with the claims for possession and for injunctive relief or may be brought in a separate action.
  - (7) The provisions of this section may not be waived.
  - (8) An action to regain possession of the premises under this section must be commenced within 90 days after the time the cause of action arises or becomes known to the plaintiff. An action for damages under this section must be commenced within 1 year after the time the cause of action arises.
  - (9) As used in this section, "owner" means the owner, lessor, or licensor or an agent of the owner, lessor, or licensor.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1976, Act 300, Eff. Mar. 1, 1977;—Am. 2013, Act 127, Imd. Eff. Oct. 9, 2013;—Am. 2014, Act 223, Eff. Sept. 24, 2014;—Am. 2019, Act 41, Imd. Eff. July 1, 2019.

**Compiler's note:** Enrolled Senate Bill No. 112 was not signed by the Governor, but, having been presented to her at 10:17 a.m. on June 17, 2019, and not having been returned by her to the Senate within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2019 PA 41) on July 1, 2019, the Legislature having continued in session.

## **600.2919 Damage or waste to land; damages; injunction; contempt.**

Sec. 2919. (1) Any person who:

(a) cuts down or carries off any wood, underwood, trees, or timber or despoils or injures any trees on another's lands, or

(b) digs up or carries away stone, ore, gravel, clay, sand, turf, or mould or any root, fruit, or plant from another's lands, or

(c) cuts down or carries away any grass, hay, or any kind of grain from another's lands without the permission of the owner of the lands, or on the lands or commons of any city, township, village, or other public corporation without license to do so, is liable to the owner of the land or the public corporation for 3 times the amount of actual damages. If upon the trial of an action under this provision or any other action for trespass on lands it appears that the trespass was casual and involuntary, or that the defendant had probable cause to believe that the land on which the trespass was committed was his own, or that the wood, trees, or timber taken were taken for the purpose of making or repairing any public road or bridge judgment shall be given for the amount of single damages only.

(2)(a) Any guardian, tenant in dower, life tenant, or tenant for years who commits or suffers any waste, during his term or estate, to the lands, tenements or hereditaments, without having a lawful license to do so, is liable for double the amount of actual damages. Any joint tenant or tenant in common who commits or suffers waste of the lands, tenements, or hereditaments held in joint tenancy, without having a lawful license in writing to do so, is liable for double the amount of actual damages at the suit of his cotenant.

(b) A claim under this provision may be brought by the person having the next immediate estate, in fee, for life, or for years or by any person who has the remainder or reversion in fee or for life after an intervening estate for life or for years; and each of the parties shall recover damages according to his estate in the premises. A joint tenant or tenant in common may bring the claim in case of waste by one of his joint tenants or tenants in common. An heir, whether of full age or not, after coming into possession of his inheritance, may maintain a claim for waste done in the time of his ancestor as well as in his own time, unless recovery has been had by the executor or administrator of the ancestor. A tenant who assigns his full interest is not liable for waste done or suffered by his assignees while he remains out of possession of the premises.

(3)(a) The circuit court shall grant injunctions to stay and prevent threatened trespass when the remedies provided by subsection (1), above, are not fully adequate and in any case where the trespass is of a continuing nature.

(b) In any case where there is not a plain, adequate, and complete remedy provided for waste by subsection (2), above, or where waste is threatened the circuit court may grant injunctions to stay and prevent waste.

(c) Having taken jurisdiction of the case the circuit court may at the same time dispose of all questions involved, including the assessing and awarding of money damages.

(4) After the commencement of any action based on a claim for damages for waste, or for the recovery of land, or for the possession of land the defendant shall not make any waste of the land in demand or premises in question during the pendency of the action. If the defendant commits, threatens to commit, or makes preparations to commit waste the court in which the action is pending or any circuit judge or circuit court commissioner may make, on the application of the plaintiff, an order restraining the defendant from the commission of any waste or further waste of the land in demand or premises in question. Any person violating the terms of any such order is guilty of a contempt of the court in which the action is pending, which is punishable as other cases of contempt.

(5) If any person commits, threatens to commit, or makes preparations to commit any waste on real estate which has been attached or levied upon by execution in any civil action, the court from which the execution or attachment issued or any circuit judge or circuit court commissioner may make, on the application of the plaintiff, an order restraining the person from committing any waste or further waste on the land which has been attached or levied upon. Any person who shall violate the terms of any such order is guilty of contempt of the court in which the action is pending and is punishable as in other cases of contempt.

(6)(a) If, at any time after the sale of real estate on execution and before a deed is executed in pursuance of the sale, the defendant in the execution or any other person commits waste on the real estate or removes from it any buildings, fences, or other fixtures belonging to the land which would pass to the grantee by a deed of conveyance of the land, the purchaser at the sale or any person who has acquired his rights may have and maintain, against the person doing the injury and against any other person who has the buildings, fences, or fixtures in his possession after their removal, the same actions which the absolute owner of the premises would be entitled to.

(b) Whenever any lands or tenements are sold by virtue of an execution issued upon any judgment, the person to whom the conveyance is executed by the sheriff pursuant to the sale has a claim for damages for any waste committed on the premises by any person after the sale.

(c) Any person entitled to the possession of lands or tenements sold under execution may use and enjoy the premises until the period of redemption has run in the following ways without being guilty of waste:

- (i) He may in all cases use and enjoy the premises sold in the same manner and for the same purposes in and for which they were used and enjoyed prior to the sale, doing no permanent injury to the freehold;
- (ii) If the premises sold were buildings or other erections he may make necessary repairs to them although he shall not make alterations in the form or structure of them;
- (iii) If the premises sold were land, he may use and improve the land in the ordinary course of husbandry, but he shall not be entitled to any crops growing on the premises at the expiration of the period of redemption;
- (iv) He may apply any wood or timber on the land to the necessary repair of any fences, buildings, or erections which were on the premises at the time of sale;
- (v) If he is in actual occupation of the land sold he may take necessary firewood from the land for the use of his family.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.2919a Recovery of damages, costs, and attorney's fees by person damaged; remedy cumulative.**

Sec. 2919a. (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

- (a) Another person's stealing or embezzling property or converting property to the other person's own use.
- (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

(2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

**History:** Add. 1976, Act 200, Eff. Mar. 31, 1977;—Am. 2005, Act 44, Imd. Eff. June 16, 2005.

**Compiler's note:** Enacting section 1 of Act 44 of 2005 provides:

"Enacting section 1. This amendatory act applies to causes of action that arise after the effective date of this amendatory act."

#### **600.2920 Unlawful taking or detention of goods or chattels; civil action to recover possession and damages; conditions; surrender or recovery of books or papers pertaining to office.**

Sec. 2920. (1) A civil action may be brought to recover possession of any goods or chattels which have been unlawfully taken or unlawfully detained and to recover damages sustained by the unlawful taking or unlawful detention, subject to the following conditions:

- (a) An action may not be maintained under this section to recover possession of or damages for goods or chattels taken by virtue of a warrant for the collection of a tax, assessment, or fine in pursuance of a statute of this state.
- (b) An action may not be maintained under this section to recover possession of or damages for goods or chattels seized by virtue of an execution or attachment at the suit of the defendant in the execution or attachment unless the goods or chattels are exempted by law from execution or attachment.
- (c) An action may not be maintained under this section by a person who, at the time the action is commenced, does not have a right to possession of the goods or chattels taken or detained.
- (d) A writ, order, or process for delivery of goods or chattels before judgment may not be issued unless the court, after notice and a hearing and under procedures provided by rules of the supreme court, determines that the claim for recovery is probably valid and unless the party claiming a right to recover possession of the goods or chattels files a sufficient bond.

(2) A person who holds books or papers pertaining to an office and who is not the person in that office shall surrender them to the person entitled to that office. The person entitled to possession of the books and papers may bring an action to recover their possession. The court may order a person to show cause why he should not be compelled to deliver those books and papers and may order the delivery of the books and papers.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1976, Act 79, Imd. Eff. Apr. 12, 1976.

#### **600.2921 Survival of actions; death of injured person during pendency of action.**

Sec. 2921. All actions and claims survive death. Actions on claims for injuries which result in death shall not be prosecuted after the death of the injured person except pursuant to the next section. If an action is pending at the time of death the claims may be amended to bring it under the next section. A failure to so amend will amount to a waiver of the claim for additional damages resulting from death.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.



**600.2922 Death by wrongful act, neglect, or fault of another; liability; action by personal representative; limitation; notice; approval or rejection of proposed settlement; award and distribution of damages; presentation of claim for damages; advising attorney for personal representative of material facts; applicability of MCL 700.3924 to distribution of proceeds.**

Sec. 2922. (1) Whenever the death of a person, injuries resulting in death, or death as described in section 2922a shall be caused by wrongful act, neglect, or fault of another, and the act, neglect, or fault is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, the person who or the corporation that would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured or death as described in section 2922a, and although the death was caused under circumstances that constitute a felony.

(2) Every action under this section shall be brought by, and in the name of, the personal representative of the estate of the deceased. Within 30 days after the commencement of an action, the personal representative shall serve a copy of the complaint and notice as prescribed in subsection (4) upon the person or persons who may be entitled to damages under subsection (3) in the manner and method provided in the rules applicable to probate court proceedings.

(3) Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to 700.2805, the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:

(a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined as of the date of death of the deceased.

(b) The children of the deceased's spouse.

(c) Those persons who are devisees under the will of the deceased, except those whose relationship with the decedent violated Michigan law, including beneficiaries of a trust under the will, those persons who are designated in the will as persons who may be entitled to damages under this section, and the beneficiaries of a living trust of the deceased if there is a devise to that trust in the will of the deceased.

(4) The notice required in subsection (2) shall contain the following:

(a) The name and address of the personal representative and the personal representative's attorney.

(b) A statement that the attorney for the personal representative shall be advised within 60 days after the mailing of the notice of any material fact that may constitute evidence of any claim for damages and that failure to do so may adversely affect his or her recovery of damages and could bar his or her right to any claim at a hearing to distribute proceeds.

(c) A statement that he or she will be notified of a hearing to determine the distribution of the proceeds after the adjudication or settlement of the claim for damages.

(d) A statement that to recover damages under this section the person who may be entitled to damages must present a claim for damages to the personal representative on or before the date set for hearing on the motion for distribution of the proceeds under subsection (6) and that failure to present a claim for damages within the time provided shall bar the person from making a claim to any of the proceeds.

(5) If, for the purpose of settling a claim for damages for wrongful death where an action for those damages is pending, a motion is filed in the court where the action is pending by the personal representative asking leave of the court to settle the claim, the court shall, with or without notice, conduct a hearing and approve or reject the proposed settlement.

(6) In every action under this section, the court or jury may award damages as the court or jury shall consider fair and equitable, under all the circumstances including reasonable medical, hospital, funeral, and burial expenses for which the estate is liable; reasonable compensation for the pain and suffering, while conscious, undergone by the deceased during the period intervening between the time of the injury and death; and damages for the loss of financial support and the loss of the society and companionship of the deceased. The proceeds of a settlement or judgment in an action for damages for wrongful death shall be distributed as follows:

(a) The personal representative shall file with the court a motion for authority to distribute the proceeds. Upon the filing of the motion, the court shall order a hearing.

(b) Unless waived, notice of the hearing shall be served upon all persons who may be entitled to damages under subsection (3) in the time, manner, and method provided in the rules applicable to probate court proceedings.

(c) If any interested person is a minor, a disappeared person, or an incapacitated individual for whom a fiduciary is not appointed, a fiduciary or guardian ad litem shall be first appointed, and the notice provided in subdivision (b) shall be given to the fiduciary or guardian ad litem of the minor, disappeared person, or

legally incapacitated individual.

(d) After a hearing by the court, the court shall order payment from the proceeds of the reasonable medical, hospital, funeral, and burial expenses of the decedent for which the estate is liable. The proceeds shall not be applied to the payment of any other charges against the estate of the decedent. The court shall then enter an order distributing the proceeds to those persons designated in subsection (3) who suffered damages and to the estate of the deceased for compensation for conscious pain and suffering, if any, in the amount as the court or jury considers fair and equitable considering the relative damages sustained by each of the persons and the estate of the deceased. If there is a special verdict by a jury in the wrongful death action, damages shall be distributed as provided in the special verdict.

(e) If none of the persons entitled to the proceeds is a minor, a disappeared person, or a legally incapacitated individual and all of the persons entitled to the proceeds execute a verified stipulation or agreement in writing in which the portion of the proceeds to be distributed to each of the persons is specified, the order of the court shall be entered in accordance with the stipulation or agreement.

(7) A person who may be entitled to damages under this section must present a claim for damages to the personal representative on or before the date set for hearing on the motion for distribution of the proceeds under subsection (6). The failure to present a claim for damages within the time provided shall bar the person from making a claim to any of the proceeds.

(8) A person who may be entitled to damages under this section shall advise the attorney for the personal representative within 60 days after service of the complaint and notice as provided for under subsection (2) of any material fact of which the person has knowledge and that may constitute evidence of any claim for damages. The person's right to claim at a hearing any proceeds may be barred by the court if the person fails to advise the personal representative as prescribed in this subsection.

(9) If a claim under this section is to be settled and a civil action for wrongful death is not pending under this section, the procedures prescribed in section 3924 of the estates and protected individuals code, 1998 PA 386, MCL 700.3924, shall be applicable to the distribution of the proceeds.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1965, Act 146, Imd. Eff. July 12, 1965;—Am. 1971, Act 65, Eff. Mar. 30, 1972;—Am. 1985, Act 93, Imd. Eff. July 10, 1985;—Am. 2000, Act 56, Eff. Apr. 1, 2000;—Am. 2005, Act 270, Imd. Eff. Dec. 19, 2005.

**Compiler's note:** Section 2 of Act 93 of 1985 provides: "This amendatory act applies to cases and matters pending on or filed after the effective date of this amendatory act."

#### **600.2922a Wrongful or negligent act resulting in miscarriage, stillbirth, or physical injury; liability; exceptions; "physician or other licensed health professional" defined.**

Sec. 2922a. (1) A person who commits a wrongful or negligent act against a pregnant individual is liable for damages if the act results in a miscarriage or stillbirth by that individual, or physical injury to or the death of the embryo or fetus.

(2) This section does not apply to any of the following:

(a) An act committed by the pregnant individual.

(b) A medical procedure performed by a physician or other licensed health professional within the scope of his or her practice and with the pregnant individual's consent or the consent of an individual who may lawfully provide consent on her behalf or without consent as necessitated by a medical emergency.

(c) The lawful dispensation, administration, or prescription of medication.

(3) This section does not prohibit a civil action under any other applicable law.

(4) As used in this section, "physician or other licensed health professional" means a person licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

**History:** Add. 1998, Act 211, Eff. Jan. 1, 1999;—Am. 2002, Act 164, Imd. Eff. Apr. 11, 2002.

**Compiler's note:** Enacting section 1 of Act 164 of 2002 provides: "Enacting section 1. This amendatory act applies to a cause of action arising on or after May 1, 2002."

#### **600.2922b Use of deadly force or other than deadly force by individual in self-defense; immunity from civil liability.**

Sec. 2922b. An individual who uses deadly force or force other than deadly force in self-defense or in defense of another individual in compliance with section 2 of the self-defense act is immune from civil liability for damages caused to either of the following by the use of that deadly force or force other than deadly force:

(a) The individual against whom the use of deadly force or force other than deadly force is authorized.

(b) Any individual claiming damages arising out of injury to or the death of the individual described in subdivision (a), based upon his or her relationship to that individual.

**History:** Add. 2006, Act 314, Eff. Oct. 1, 2006.

**600.2922c Individual sued for using deadly force or force other than deadly force; award of attorney fees and costs; conditions.**

Sec. 2922c. The court shall award the payment of actual attorney fees and costs to an individual who is sued for civil damages for allegedly using deadly force or force other than deadly force against another individual if the court determines that the individual used deadly force or force other than deadly force in compliance with section 2 of the self-defense act and that the individual is immune from civil liability under section 2922b.

**History:** Add. 2006, Act 312, Eff. Oct. 1, 2006.

**600.2923 Action on official or other bond; assignment of specific breaches; pendency of suit; notice by surety; damages paid equal or less than liability of surety; execution; levy; judgments in excess of liability; unsatisfied executions.**

Sec. 2923. (1) When an action is prosecuted in any court upon any bond of any public officer, or upon any bond for the breach of any condition, other than the payment of money, or for any penal sum for the nonperformance of any covenant or written agreement, the plaintiff shall assign the specific breaches for which the action is brought, and upon the trial of such action, the verdict and judgment shall be for such damages as are found arising from the specific breaches assigned; and such judgment shall not be a bar to any further action by the same, or any other plaintiff, for any subsequent breaches of the condition of said bond; but said bond shall stand as security for any further or subsequent breaches to the amount of the remainder of the penalty thereof.

(2) During the pendency of any suit upon such official bond, or after judgment rendered in such suit, any other party aggrieved by the default or delinquency of such officer, may, in like manner prosecute an action upon such official bond; and the pendency of any other suit on the same bond, or a judgment recovered by or against any other person on such bond shall not abate or in any manner affect such suit, or the proceedings therein, except as hereinafter provided.

(3) No such suit shall be barred, nor shall the amount which the plaintiff may be entitled to recover therein, be affected by any notice given by any surety in such bond, of a judgment recovered thereon, unless it is accompanied by an allegation that the sureties in such bond, some or 1 of them, have been obliged to pay the damages assessed by such judgment, or some part thereof, for want of sufficient property of such officer whereon to levy the same, or that they will be obliged to pay the same, or some part thereof for the same reason; nor unless such notice is verified by the oath of the defendant giving the same.

(4) If it appears that the amount of any damages so recovered, which such surety has been obliged to pay, or will be obliged to pay, as specified in (3), is equal to the amount for which such defendant shall be liable, by virtue of the bond, he shall be acquitted and discharged of all further liability, and judgment shall be rendered in his favor.

(5) If it appears that the amount of any damages so recovered, which such surety has been obliged to pay, or which he will be obliged to pay, is not equal to the liability of such surety, the amount thereof shall be allowed to such defendant, in estimating the extent of his liability in any such action.

(6) Whenever a judgment is obtained against an officer and his sureties, a direction shall be endorsed on the execution issued thereon, by the attorney issuing the same, to levy the amount of such execution, in the first place, of the property of such officer, and if sufficient property of such officer cannot be found to satisfy such execution, then to levy the deficiency of the property of the sureties.

(7) Whenever several judgments are obtained at the same term, upon any official bond of any officer, for damages, amounting in the whole to more than the sums for which the sureties therein shall be liable, the court shall order the moneys levied upon such judgments from the property of the sureties, to be distributed to the persons for whose use such judgments were recovered respectively, in proportion to the amount of their respective recoveries.

(8) If executions are issued upon several judgments obtained at the same term, upon any such official bond, and sufficient money is not raised to satisfy all of the said executions, the court shall distribute the money collected on such executions to the plaintiffs in proportion to the amount of their respective recoveries.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2924 Bill of discovery.**

Sec. 2924. An equitable action seeking relief in the nature of a bill of discovery may be filed and the defendant shall be compelled to answer, where the defendant is charged with having given to another person a power of attorney to enter up a judgment, or with having confessed or suffered any judgment, purporting to be for a sum or debt due, when in fact nothing, or only a part of the sum mentioned in such power of attorney or

judgment is due, with intention to defraud the just creditors of such defendant, or to place the property of the defendant out of the reach of his creditors, or to hold the same in some secret trust or confidence, or for the benefit of such defendant.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.2925 Repealed. 1974, Act 318, Imd. Eff. Dec. 15, 1974.**

**Compiler's note:** The repealed section pertained to contribution between joint tort-feasors.

#### **600.2925a Right of contribution where judgment not recovered; limitation on recovery; effect of settlement; defenses; intervention; subrogation; right of indemnity; breach of fiduciary obligation; liability of secretary of state.**

Sec. 2925a. (1) Except as otherwise provided in this act, when 2 or more persons become jointly or severally liable in tort for the same injury to a person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(2) The right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability and his total recovery is limited to the amount paid by him in excess of his pro rata share. A tort-feasor against whom contribution is sought shall not be compelled to make contribution beyond his own pro rata share of the entire liability.

(3) A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor if any of the following circumstances exist:

(a) The liability of the contributee for the injury or wrongful death is not extinguished by the settlement.

(b) A reasonable effort was not made to notify the contributee of the pendency of the settlement negotiations.

(c) The contributee was not given a reasonable opportunity to participate in the settlement negotiations.

(d) The settlement was not made in good faith.

(4) In an action to recover contribution commenced by a tort-feasor who has entered into a settlement, the defendant may assert the defenses set forth in subsection (3) and any other defense he may have to his alleged liability for such injury or wrongful death.

(5) A tort-feasor who satisfies all or part of a judgment entered in an action for injury or wrongful death is not entitled to contribution if the alleged contributee was not made a party to the action and if a reasonable effort was not made to notify him of the commencement of the action. Upon timely motion, a person receiving such notice may intervene in the action and defend as if joined as a third party.

(6) A liability insurer, who by payment has discharged in full or in part the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the common liability. It may assert this right either in its own name or in the name of its insured. This provision does not limit or impair any right of subrogation arising from any other relationship.

(7) This section does not impair any right of indemnity under existing law. Where 1 tort-feasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(8) This section does not apply to breaches of trust or of other fiduciary obligations.

(9) This section shall not operate to increase the liability of the secretary of state under Act No. 198 of the Public Acts of 1965, as amended, being sections 257.1101 to 257.1132 of the Michigan Compiled Laws.

**History:** Add. 1974, Act 318, Imd. Eff. Dec. 15, 1974.

**Compiler's note:** Section 3 of Act 318 of 1974 provides: "The provisions of this amendatory act shall apply only to torts committed on or after January 1, 1975."

#### **600.2925b Determining pro rata shares of tortfeasors.**

Sec. 2925b. Except as otherwise provided by law, in determining the pro rata shares of tortfeasors in the entire liability as between themselves only and without affecting the rights of the injured party to a joint and several judgment:

(a) Their relative degrees of fault shall be considered.

(b) If equity requires, the collective liability of some as a group shall constitute a single share.

(c) Principles of equity applicable to contribution generally shall apply.

**History:** Add. 1974, Act 318, Imd. Eff. Dec. 15, 1974;—Am. 1982, Act 147, Imd. Eff. Apr. 28, 1982;—Am. 1986, Act 178, Eff. Oct. 1, 1986.

#### **600.2925c Enforcement of contribution; absence of judgment as bar to contribution;**

**discharge of other tort-feasors; judgment binding in determining right to contribution.**

Sec. 2925c. (1) Whether or not judgment has been entered in an action against 2 or more tort-feasors for the same injury or wrongful death, contribution may be enforced by separate action.

(2) When a judgment has been entered in an action against 2 or more tort-feasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of 1 against other judgment defendants by motion upon notice to all parties to the action.

(3) If there is a judgment for the injury or wrongful death against the tort-feasor seeking contribution, a separate action by him to enforce contribution shall be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.

(4) If there is not a judgment for the injury or wrongful death against the tort-feasor seeking contribution, his right to contribution is barred unless he has discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within 1 year after payment, or unless he has agreed while action is pending against him to discharge the common liability and has, within 1 year after the agreement, paid the liability and commenced his action for contribution.

(5) The recovery of a judgment for an injury or wrongful death against 1 tort-feasor does not of itself discharge the other tort-feasors from liability for the injury or wrongful death unless the judgment is satisfied. Satisfaction of the judgment does not impair any right of contribution.

(6) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death is binding as among such defendants in determining their right to contribution.

**History:** Add. 1974, Act 318, Imd. Eff. Dec. 15, 1974.

**Compiler's note:** Section 3 of Act 318 of 1974 provides: "The provisions of this amendatory act shall apply only to torts committed on or after January 1, 1975."

**600.2925d Effect of release, covenant not to sue, or covenant not to enforce judgment.**

Sec. 2925d. If a release or a covenant not to sue or not to enforce judgment is given in good faith to 1 of 2 or more persons for the same injury or the same wrongful death, both of the following apply:

(a) The release or covenant does not discharge 1 or more of the other persons from liability for the injury or wrongful death unless its terms so provide.

(b) The release or covenant discharges the person to whom it is given from all liability for contribution to any other person for the injury or wrongful death.

**History:** Add. 1974, Act 318, Imd. Eff. Dec. 15, 1974;—Am. 1995, Act 161, Eff. Mar. 28, 1996.

**Compiler's note:** Section 3 of Act 318 of 1974 provides: "The provisions of this amendatory act shall apply only to torts committed on or after January 1, 1975."

**600.2926 Jurisdiction to appoint receivers; termination.**

Sec. 2926. Circuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law. This authority may be exercised in vacation, in chambers, and during sessions of the court. In all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver's power and duties where they are not otherwise spelled out by law. Subject to limitations in the law or imposed by the court, the receiver shall be charged with all of the estate, real and personal debts of the debtor as trustee for the benefit of the debtor, creditors and others interested.

The court may terminate any receivership and return the property held by the receiver to the debtor whenever it appears to be to the best interest of the debtor, the creditors and others interested.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2926a Cemetery receivers and conservators; appointments; term; accounting; compensation and expenses.**

Sec. 2926a. (1) Circuit court judges in the exercise of their equitable powers in matters relating to cemeteries or other entities regulated under the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543; 1869 PA 12, MCL 456.101 to 456.119; 1855 PA 87, MCL 456.1 to 456.36; 1915 PA 58, MCL 456.201 to 456.213; and 1882 (Ex Sess) PA 13, MCL 456.251 to 456.253, may appoint receivers and conservators.

(2) Appointments under subsection (1) shall be limited to 1 year with reappointment permissible. Any person appointed under this section shall be required to make an accounting to the court at least once each 90 days. Compensation and reimbursable expenses for such receivers and conservators shall be determined and approved by the appointing court.

**History:** Add. 1967, Act 180, Eff. Nov. 2, 1967;—Am. 2008, Act 477, Imd. Eff. Jan. 12, 2009.



**600.2927 Mortgaged property; nonpayment of taxes or insurance as waste; appointment of receiver; conditions.**

Sec. 2927. (1) The parties to any mortgage, trust mortgage, or deed of trust of real property, or any extension thereof, may, by agreement herein contained to that effect, provide that the failure of the mortgagor or grantor, as the case may be, to pay any taxes assessed against such property or installments thereof, in the event said taxes are being paid under the provisions of Act No. 126 of the Public Acts of 1933, as amended, or any insurance premium upon policies covering any property located upon such premises constitutes waste.

(2) If such mortgagor or grantor in such instrument fails to pay such taxes or insurance premiums upon property subject to the terms of a mortgage, trust mortgage, or deed of trust containing such agreement the circuit court having jurisdiction of such property may, in its discretion upon complaint or motion filed by such mortgagee, grantee, assignee thereof or trustee under such instrument and upon such notice as the court may require, appoint a receiver of the property for the purpose of preventing such waste. Subject to the order of the court, the receiver may collect the rents and income from such property and shall exercise such control over such property as to such court may seem proper.

(3) No receiver may be appointed under the provisions of this section for any dwelling house or farm occupied by any owner thereof as his home or farm. No receiver may be appointed under the provisions of this section for any store or other business property having an assessed valuation of \$7,500.00 or less.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**Compiler's note:** Act 126 of 1933, referred to in this section, was repealed by Act 150 of 1980.

**600.2928 Land of infants and incompetents; disposition; discharge of incumbrance; effect of will or conveyance; proceeds of sale; dower; court orders; infant or incompetent as ward of court; proceedings; delivery of guardianship property.**

Sec. 2928. (1) The circuit court may order the sale, lease, exchange, conveyance, and if necessary or desirable, the platting, of all or any part of any lands, tenements, and hereditaments held by an infant or other incompetent person, by way of mortgage, in trust only for others, in fee, life tenancy, tenant for years, or in any other way when it appears that the sale, lease, exchange or conveyance is necessary and proper for the support, maintenance and education of the infant or other incompetent or that the interest of such person or the person for whom the property is held will be substantially promoted by the sale, lease, exchange, conveyance or platting. This power shall be exercised in accordance with the rules of court and in the manner and with the restrictions as the court deems expedient.

(2) Whenever it is made to appear to the court that it will be manifestly for the interest and advantage of any infant or other incompetent person that any incumbrance upon the real estate of such person should be purchased and discharged, in whole or in part, the court may authorize the guardian of such person to purchase and discharge the same, and if necessary, to sell and dispose of such part of the real estate of such person as may be necessary for that purpose. Such purchase and discharge shall in no way be construed as vesting in said guardian any right, title or interest in such premises, to the prejudice of such person.

(3) But no real estate or term for years shall be sold, leased or disposed of in any matter against the provisions of any last will, or of any conveyance, by which such estate or term was devised or granted to such infant or other incompetent person.

(4) No sale made as aforesaid of the real estate of any infant or other incompetent person, shall give to such infant or other incompetent person, any other or greater interest or estate in the proceeds of such sale than he had in the estate sold; but the said proceeds shall be deemed real estate of the same nature as the property sold.

(5) With the consent of the person holding a dower interest in such property, the court may authorize that a lump sum settlement releasing dower be made with such person and taken from the proceeds received.

(6) Every conveyance, lease, or other disposition of the property, and every plat, made pursuant to the order of the court and confirmed by the court, shall be as good and effective in law as if it were made by the infant or other incompetent person, when of lawful age and of sound mind.

(7) The infant or other incompetent person, in an action under this section becomes a ward of the court for the property involved, its proceeds and income, and he and his guardian are subject to periodic orders of the court pertaining thereto.

(8) Proceedings under this section are equitable in nature.

(9) When a guardian has been appointed by the probate court, the circuit court guardian shall deliver all guardianship property and funds to the probate court guardian and upon receipt therefor, the guardian appointed by the circuit court shall be discharged.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 117, Eff. Aug. 28, 1964.

**600.2929 Lands held in trust; sale by fiduciary, orders of court.**

Sec. 2929. (1) Actions for equitable relief by any fiduciary seeking authority to sell any lands, tenements, or hereditaments which he is holding in trust for others may be brought in the circuit courts. If it appears to the best interest of the person for whom the lands, tenements, and hereditaments are held in trust the court may order, direct, and authorize the fiduciary to sell, grant, and convey the lands, tenements, and hereditaments at public or private sale. When approved by the circuit court, a sale made pursuant to this section passes title to the lands, tenements, and hereditaments to the purchaser.

(2) The court shall make all proper orders and directions from time to time for the management, investment, and disposition of the moneys received from the sale, and the interest and income therefrom.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2930 Life estate; sale on order of court; bond; confirmation; effect of conveyance, will, or order of court; proceedings.**

Sec. 2930. (1) Circuit courts may order any lands, tenements, or hereditaments which are held for life, with or without power of appointment by will or sale, or held in trust, without power of sale, sold under the direction of the court, whenever it satisfactorily appears that the rights of the interested parties will otherwise be jeopardized.

(2) Upon making the order of sale the court may order that a bond be given with penalty and sureties, in the form the court directs. This bond shall run to the clerk of the court for the use and benefit of any person who is or may become interested in the lands, tenements, or hereditaments, or their proceeds, conditioned for the investment of and accounting for the proceeds of the lands, tenements, and hereditaments, and for the observance of all orders of the court in relation to the lands, tenements, and hereditaments, and their proceeds.

(3) After the confirmation of the sale, the proceeds of the sale shall stand in lieu of the property sold, and the court shall make such orders as to the investment of the proceeds as may be necessary. From time to time thereafter, the court may make such further orders as the circumstances may require.

(4) No sale or conveyance of any kind shall be made of any property, under the authority of this provision, contrary to any specific provisions contained in the deed of conveyance, or in the will, under which the petitioner holds the property.

(5) Every conveyance made in accordance with an order of court entered in an action brought under this section shall be good and effectual in law and shall convey the same title as if it were made by a person seized of the title in fee.

(6) Proceedings under this section are equitable in nature.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2931 Repealed. 2016, Act 489, Eff. Apr. 6, 2017.**

**Compiler's note:** The repealed section pertained to barring dower of incompetent wife.

**600.2932 Quieting title; interest of plaintiff; action by mortgagee; establishment of title; tenancy in common; actions.**

Sec. 2932. (1) Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

(2) No action may be maintained under subsection (1) by a mortgagee, his assigns, or representatives for recovery of the mortgaged premises, until the title to the mortgaged premises has become absolute, or by a person for the recovery of possession of premises, which were sold on land contracted, to whom relief is available under subdivision (1) of section 5634.

(3) If the plaintiff established his title to the lands, the defendant shall be ordered to release to the plaintiff all claims thereto. In an appropriate case the court may issue a writ of possession or restitution to the sheriff or other proper officer of any county in this state in which the premises recovered are situated.

(4) Any tenant or tenants in common who recovers any undivided interest in lands in an action under subsection (1) against a person or persons who may be in possession thereof, but who does not show in the trial of such action that he or they have any interest therein or title thereto, may take possession of the entire premises subject to all of the rights and interest of the other tenant or tenants in common therein.

(5) Actions under this section are equitable in nature.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 8, Eff. Aug. 28, 1964.

**600.2933 Repealed. 2016, Act 489, Eff. Apr. 6, 2017.**

**Compiler's note:** The repealed section pertained to recovery of dower by widow or woman and her husband.

**600.2934 Quieting title; lands owned by corporation after expiration of term; complaint; stockholders and creditors of corporation as defendants; service; judgment; damages; costs; actions.**

Sec. 2934. (1) Notwithstanding the expiration of the term of private corporations organized for the conduct of business of any kind, under the laws of this state, any one having such an interest as would entitle him to bring an action under section 2932, in any land owned by such corporation while in existence, and now aliened or divested from it by due process of law, may bring an action under section 2932 and this section for the recovery of the same.

(2) The summons and complaint shall be against such corporation by its corporate name, and against any occupant or occupants of such land, as defendants.

(3) In accordance with the court rules, any person or persons who were stockholders of such corporation while it subsisted and who still retain their rights in the property in question, by virtue of having owned stock therein, and any creditor or creditors of such corporation, whose claims are subsisting and not barred by limitation of time, may appear and defend such action as fully as such corporation could have done while subsisting. Such right to appear and defend may be drawn in question by the plaintiff on the trial of the cause.

(4) All persons so appearing shall plead together and in the name of the corporation. Service on the corporation, in the manner prescribed by the court rules, is a full and complete service upon such corporation, and upon all persons natural or artificial, interested in said land, because of their having been stockholders in the corporation while subsisting, or creditors thereof. All persons so appearing and defending, or seeking to defend, are liable for costs in the action as fully as such corporation would be if defending.

(5)(a) The judgment in such suit shall be against the corporation in the corporate name and shall be binding upon it and upon all persons claiming said land by virtue of their stock in or demands upon the same, and shall be conclusive against such corporation and such persons subject only to such exceptions as are or may be provided by general statute in other actions brought under section 2932.

(6) Any judgment in favor of the defendant corporation shall inure to the benefit of the persons entitled to the property in dispute. The plaintiff shall have judgment against such corporation neither for money damages of any kind nor for costs of suit subject to the discretion of the court, nor shall he be entitled to file against it a suggestion of damages in continuation of such judgment.

(7) Actions under this section are equitable in nature.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2935 Quieting title; recording of judgment.**

Sec. 2935. If the effect of a judgment is to quiet the title to lands, or if it in any way concerns the title to real estate, a certified copy thereof may be recorded in the office of the register of deeds of any county where said lands or any part of the same are situated.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2936 Probate in chancery of foreign will; proof by copy; legal representative's bill of peace.**

Sec. 2936. (1) Whenever it is necessary to probate in this state, the last will of any deceased person which was either

(a) executed in a foreign country whose laws do not require or provide for the probate of wills after the death of the maker, or

(b) executed by a testator who was not at the time of his death domiciled in the country of execution, and the laws of the country of execution require or provide for the probate of wills after the death of the maker, if the original will cannot be produced in this state for probate, it, or any part thereof, may be proved and allowed by a full and complete copy in an action in the circuit court in and for any county in which the testator left any property affected by the will at his decease. The will or that part thereof established and proved shall be certified to and filed with the proper probate court which vests the probate court with the power and jurisdiction over the estate as if the will had been validly proved and allowed in the probate court.

(2) Whenever any person appointed by a probate court as the legal representative or trustee of the estate of a deceased person, a minor, or a mentally incompetent person, has possession of over \$100.00-worth of the estate's real or personal property or its proceeds and has good reason to doubt his right to hold or dispose of this property because of adverse claims of title or lien of other persons or corporations, or of conflicting proceedings to administer the estate in that or another probate court, and no proceedings have been taken to

test his right, by adverse claimants or otherwise, he may file a complaint in the nature of a bill of peace in the circuit court of the county in which is located the probate court which appointed him, to have adjudicated the validity of his own right and the rights of adverse claimants and the legal representatives appointed in conflicting proceedings.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2937 Obstructions and encroachments on public highways, streets and alleys; circuit court; relief.**

Sec. 2937. All claims for relief from obstructions and encroachments on the public highways, streets, and alleys in cities, incorporated villages, and organized townships in this state may be brought in the circuit courts. The courts shall give such legal and equitable relief as is warranted.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2938 Obscene matter; injunction; adjudication; temporary or preliminary injunction; effect of injunction; distribution of obscene matter after summons and complaint; delegation of authority; criminal prosecution; proceedings.**

Sec. 2938. (1) The chief executive or legal officer of any city, village or charter township or prosecuting attorney of the county may institute and maintain an action in the circuit court against any person, firm or corporation to enjoin and prevent the sale or further sale or the distribution or further distribution or the acquisition or possession of any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, drawing, photograph, figure or image or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy, indecent or disgusting, or which contains an article or instrument of indecent or immoral use or purports to be for indecent or immoral use or purpose.

(2) Any person, firm or corporation may also bring an action in the circuit court as plaintiff to obtain an adjudication of the lawful propriety of the sale, distribution, possession or acquisition of any item as follows:

(a) The item may be submitted to the chief executive or legal officer of the city, village, charter township or prosecuting attorney of the county in which the sale, distribution, possession or acquisition is intended to be had.

(b) The officer to whom submitted, within 5 days shall furnish to the person, firm or corporation by whom submitted, a written statement in positive and unequivocal words that the sale, distribution, possession or acquisition of such book or other article or thing so submitted is by him deemed or not deemed, as the case may be, to be in violation of the provisions of any section of the Michigan penal code.

(c) If the officer deems the sale, distribution, possession or acquisition to be in violation of the provisions of any section of the Michigan penal code, the person, firm or corporation making the submission may bring a civil action to adjudicate the lawful propriety of the sale, distribution, possession or acquisition.

(d) The officer to whom a submission is authorized to be made, without any submission being so made, may furnish to any person, firm or corporation a written statement covering any book or other article or thing referred to in (1), and thereupon the person, firm or corporation to whom so furnished has a like right to bring action as in the case of the statement furnished pursuant to a submission.

(3) In any action brought as provided in (2) the officer furnishing the written statement shall be made defendant thereto. The officer shall be given prior notice of the time and place of filing such action and has the right to appear at such time and place and seek an injunction against distribution pending the final adjudication thereon.

(4) A preliminary injunction or restraining order may be issued upon or at any time after the filing of the complaint. The person, firm or corporation sought to be enjoined is entitled to a trial of the issues within 1 day after joinder of issue and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(5) If a final order or judgment of injunction is entered in favor of such officer of the city, village or charter township and against the person, firm or corporation sought to be enjoined, the final order or judgment shall contain a provision directing the person, firm or corporation to surrender to the sheriff of the county in which the action was brought any of the matter described in (1) and the sheriff shall be directed to seize and destroy the same.

(6) In any action brought as herein provided the officer of the city, charter township or village shall not be required to file any undertaking before the issuance of an injunction order provided for in (4), is not liable for costs and is not liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm or corporation sought to be enjoined.

(7) Every person, firm or corporation who sells, distributes or acquires possession with intent to sell or distribute any of the matter described in (1), after the service upon him of a summons and complaint in an action brought by such officer of any city, charter township or village pursuant to this section is chargeable

with knowledge of the contents thereof.

(8) The legislative body of any city, village or charter township or board of supervisors of any county may transfer or delegate any of the power and authority of the chief executive or legal officer or prosecuting attorney, as the case may be, to any other officer or agency of the city, village, charter township or county and all acts done by the officer or agency to whom so transferred or delegated shall be as effective in law as if done by the officer in this section designated.

(9) Nothing in this section shall be construed to preclude or impair prosecution in the criminal courts for violation of any section of the Michigan penal code relating to obscene or other similar matters except when an adjudication has been made under the procedure authorized herein to the effect that the book, picture, or other subject of adjudication is not violative of any such law such adjudication is full protection for all persons against any prosecution for criminal penalties or other action in respect of the subject of such adjudication.

(10) Proceedings under this section are equitable in nature.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.2939 Gaming; action by loser; oath of parties; prosecution according to common law; forfeiture; limitation; securities; lands enuring of benefit.**

Sec. 2939. (1) In any suit brought by the person losing any money or goods, against the person receiving the same, when it appears from the complaint that the money or goods came to the hands of the defendant by gaming, if the plaintiff makes oath before the court in which such suit is pending, that the money or goods were lost by gaming with the defendant as alleged in the complaint, judgment shall be rendered that the plaintiff recovered damages to the amount of the said money or goods, unless the defendant makes oath that he did not obtain the same, or any part thereof by gaming with the plaintiff; and if he so discharges himself, he shall recover of the plaintiff his costs; but the plaintiff may at his election, maintain and prosecute his action according to the usual course of proceedings in such actions at common law.

(2) Every person who wins or loses, at any time or sitting, by gaming or betting on the hands or sides of such as are gaming, any money or goods, to the value of \$5.00 or more, whether the same is paid over or delivered, or not, shall forfeit and pay 3 times the value of such money or goods if the action therefor is commenced within 6 months after the committing of the offense.

(3) All notes, bills, bonds, mortgages, or other securities or conveyances whatever, in which the whole or any part of the consideration, shall be for any money or goods won by playing at cards, dice, or any other game whatever, or by betting on the sides or hands of such as are gaming, or by any betting or gaming whatever, or for reimbursing or repaying any moneys knowingly lent or advanced for any gaming or betting, shall be void and of no effect, as between the parties to the same, and as to all persons, except such as shall hold or claim under them in good faith, and without notice of the illegality of such contract or conveyance.

(4) Whenever any mortgage or other conveyance of land is adjudged void under (3), such lands shall enure to the sole benefit of such person or persons as would be entitled thereto, if the mortgagor or grantor were naturally dead; and all grants and conveyances for preventing such lands from coming to or devolving upon the person or persons to whose use, and benefit the said lands would so enure, is fraudulent and of no effect, except as against purchasers in good faith, and without notice of the illegality of such mortgage or other conveyance.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.2940 Nuisance; abatement; circuit court; injunction; private nuisance; damages; warrant to abate and remove nuisance; expense; actions.**

Sec. 2940. (1) All claims based on or to abate nuisance may be brought in the circuit court. The circuit court may grant injunctions to stay and prevent nuisance.

(2) When the plaintiff prevails on a claim based on a private nuisance, he may have judgment for damages and may have judgment that the nuisance be abated and removed unless the judge finds that the abatement of the nuisance is unnecessary.

(3) If the judgment is that the nuisance shall be abated, the court may issue a warrant to the proper officer, requiring him to abate and remove the nuisance at the expense of the defendant, in the manner that public nuisances are abated and removed. The court may stay the warrant for as long as 6 months to give the defendant an opportunity to remove the nuisance, upon the defendant giving satisfactory security to do so.

(4) The expense of abating and removing the nuisance pursuant to such warrant, shall be collected by the officer in the same manner as damages and costs are collected upon execution, excepting that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be sold by the officer, in like manner as goods are sold on execution for the payment of debts. The officer may apply the proceeds of such



sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand. If the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided.

(5) Actions under this section are equitable in nature unless only money damages are claimed.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2941 Artesian or flowing well; certain condition deemed nuisance; abatement; damages; unreasonable or unnecessary waste; order or judgment; reopening.**

Sec. 2941. (1) Any artesian or flowing well, the water of which is unnecessarily allowed to run to waste in an unreasonable manner to the depletion or lowering of the head or reservoir thereof to the detriment or damage of other wells supplied from the same head or reservoir, is a nuisance, and its owner and the owner of the land on which it is situated are subject to all the actions for abatement and damages in favor of the person or persons injured, as provided by law for other nuisances or tortious acts.

(2) Where any well is supplied by a head, reservoir, stratum, or vein or by percolating waters common to other springs or wells, and the owner thereof or his lessee or licensee puts its waters to a use unreasonable or unnecessary, in view of the condition and situation of the land on which it is situated, and through such unreasonable or unnecessary use, lowers or depletes the head, pressure, or supply of water of any spring or well dependent on the same head, vein, or stratum, to the detriment or injury of the owner or any person entitled to the use thereof, the well so unreasonably and unnecessarily used, is a nuisance, and its owner and the owner of the land on which it is situated are subject to all the actions for abatement and damages in favor of the person or persons injured, as provided by law for other nuisances or tortious acts.

(3) Where any order or judgment is rendered under this section, declaring any well a nuisance because of the waste or unreasonable use of its waters and directing the abatement thereof, such order or judgment shall specify in some practicable manner the daily amount or volume of water that may be used or allowed to flow therefrom without violating such order or judgment, and specify such reasonable time as to the court shall seem just within which the provisions thereof shall be carried into effect. Any such order or judgment may be reopened at any time after entry on the question of reasonable use on a proper showing of change of circumstances or other equitable reason therefor.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.2942 Public securities validation; action to contest validity; counterclaim; third party complaint; continuances; amendment; notice to appear; service; publication of order to appear; parties; other actions; intervention; final judgment; appeal; upholding validity of securities; definitions; short title; proceedings.**

Sec. 2942. (1) If an action contesting the validity of any securities proposed to be issued or any aspect of such validity is brought against any public body, the public body may file a counterclaim against the plaintiff and a third party complaint against the state of Michigan and all persons, resident and nonresident, owning property or subject to taxation in the public body or in the political entity or entities it represents, and all other persons interested in or affected by the issuance of the securities, for the purpose of securing an adjudication, forever conclusive as against all the parties, as to the validity of the securities or as to those issues affecting such validity as are then properly justiciable or become so during the pendency of the proceedings. The court may grant continuances and permit amendments as may be appropriate to enable the issues affecting the validity of the securities to be adjudicated as fully as possible.

(2) The counterclaim and third party complaint shall briefly set out by proper allegation, reference or exhibit, insofar as the circumstances of the case permit, such facts as may be necessary to show the authority of the public body to issue the securities and to take any other action essential to their validity, the taking of all proceedings and other action and the satisfaction of all legal requirements essential to the validity of the securities (including the holding of any required election and the result thereof), the nature and characteristics of the securities (including amount, date, purpose, maturities, maximum interest rate), the source of the funds from which the securities are to be paid, and any other essential matters relevant to the issues upon which an adjudication is sought. In case the public body was established for the purpose of constructing or acquiring a public improvement for which the securities are to be issued, the counterclaim shall also set forth the authority for the creation of the public body.

(3) Upon the filing of the counterclaim and third party complaint, the court shall issue an order in general terms in the form of a notice directed against the plaintiff in the action and against the state of Michigan and, without naming them, all public bodies, property owners, taxpayers, citizens and others having or claiming any right or interest affected in any way by the issuance of the securities, requiring them, in general terms, and the state of Michigan, through its attorney general or his representative, to appear at a time and place

designated in the order and show cause why the prayer of the counterclaim and third party complaint should not be granted.

(4) A copy of the counterclaim, the third party complaint, and the order shall be served upon the plaintiff in the action and upon the attorney general at least 20 days before the time fixed in the order for the hearing. The attorney general shall carefully examine the counterclaim and third party complaint and if it appears, or there is reason to believe, that it is defective, insufficient or untrue, or if in his opinion the securities have not been duly authorized or cannot be lawfully issued, or the taxes, assessments, rates, tolls or other charges or revenues provided for payment of said securities cannot be lawfully levied, collected and pledged for such purpose, he shall make such defense thereto as may seem proper.

(5) Prior to the date set for hearing, the clerk of the court shall publish a copy of the order once each week for 3 consecutive weeks in each of the newspapers designated below, the first publication in each newspaper to be not less than 20 nor more than 30 days prior to the date set for hearing:

(a) If the public body embraces, or the project for which the securities are to be issued extends into, territory in only 1 county, the notice shall be published in the county in a newspaper of general circulation in the territory.

(b) If the public body embraces, or the project for which the securities are to be issued extends into, territory in more than 1 but not more than 5 counties, the notice shall be published in each of the counties in a newspaper of general circulation therein.

(c) If the public body embraces, or the project for which the securities are to be issued extends into, territory in more than 5 counties, the notice shall be published in each of the 5 most populous counties in a newspaper of general circulation therein, and also in a newspaper or newspapers of general circulation in the territory outside of the 5 counties.

(d) If the public body is the state of Michigan (as distinguished from a political subdivision thereof) or any department, commission, agency or official thereof, or if the project extends throughout the state, the notice shall also be published in the county wherein the seat of state government is located, in a newspaper of general circulation therein.

(6) At least 10 days prior to the date set for the hearing, the clerk of the court shall give such notice of the filing of the counterclaim and the third party complaint and of the hearing on the order to show cause to all known parties as the court shall direct in the order

(7) Upon motion of the public body, whether before or after the date set for hearing as provided in (3), the court may enjoin the commencement by any person or public body, of any other action contesting the validity of the security issue described in the counterclaim, may order a joint hearing or trial before him of all issues raised by the counterclaim and third party complaint which are then pending in any action or proceeding in any court, may order all such actions or proceedings consolidated with the action pending before him, and may make such orders as may be necessary and proper to effect such consolidation and as may tend to avoid unnecessary costs or delays and multiplicity of actions. Such order shall not be appealable.

(8) Any public body, property owner, taxpayer, citizen or other person affected by or interested in the issuance of the securities may become a named party to the proceedings by pleading to the third party complaint on or before the time set for hearing as provided in (3) or thereafter by intervention upon leave of court. At the time and place designated in the order for hearing, the court shall proceed to hear and determine all questions of law and fact in the proceedings and may make such orders as to the proceedings and such adjournments as will enable the court properly to try and determine the same and to render a final judgment therein with the least possible delay. Such final judgment shall be based upon a written opinion of the court which shall find the facts specially and shall state separately the court's conclusions of law therein.

(9) Any parties to the cause, whether plaintiff, defendant, third party plaintiff, third party defendant, intervenor or otherwise, dissatisfied with the final judgment, may appeal therefrom to the supreme court. The supreme court, insofar as practicable, shall expedite and give priority to the hearing and decision on the appeal.

(10) In the event that the judgment upholds the validity of the securities or such aspects thereof as have been adjudicated, and no appeal is taken therefrom, or if an appeal is taken and the judgment is affirmed, the judgment shall be forever binding and conclusive against the public body and all other parties to the cause, named or unnamed, and shall constitute a permanent injunction against the institution by any person of any action contesting any aspect of the validity of the security issue which has been adjudicated.

(11) For the purposes of this section, the term:

(a) "Public body" means the state of Michigan or any political subdivision thereof, including any county, township, city, village, school district, metropolitan district, port district, drainage district, public authority or other political entity, or any department, commission, agency or official of any of the foregoing.

(b) "Securities" or "security issue" means any bonds, notes, orders, certificates or other evidences of

indebtedness whether general or special obligations and whether payable from taxes, assessments, rates, tolls or other charges or revenues or otherwise creating an obligation upon a public body.

(c) "Validity" as applied to any securities means the authority of the public body to issue the securities, to levy and collect the taxes, assessments, rates, tolls or other charges or revenues as are provided for the payment thereof, to pledge the same for payment, and to take any action essential to any of the foregoing; and also the legality of all proceedings and other action taken, and the satisfaction of all legal requirements, in connection with the issuance of the securities and the levy and collection of the taxes, assessments, rates, tolls or other charges or revenues and the pledge thereof.

(12) This section shall be known and may be cited as the "public securities validation act".

(13) Counterclaims and third party proceedings brought pursuant to this section are equitable in nature.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1962, Act 187, Imd. Eff. May 24, 1962.

#### **600.2943 Quieting title; relief to defendant on rehearing.**

Sec. 2943. When any rehearing of an action quieting title to real estate is ordered on petition of a defendant, the relief to be granted the defendant shall be limited to an award of damages against the prevailing parties in the original action, in an amount determined by the court to be equivalent to the fair cash market value of the interest of the defendant in the real estate at the time of entry of the original decree. Any decree on rehearing shall not be a lien or encumbrance on the real estate to secure payment of the sum awarded.

**History:** Add. 1962, Act 187, Imd. Eff. May 24, 1962.

#### **600.2944 Access to adjoining property for repairs or improvements.**

Sec. 2944. When an owner or lessee seeks to make improvements or repairs to real property so situated that the improvements or repairs cannot reasonably be made by the owner or lessee without entering the premises of an adjoining owner or his lessee, and permission so to enter has been refused, the owner or lessee seeking to make the improvements or repairs may commence a civil action in the circuit court of the county in which the property is located. The complaint shall state the facts making the entry necessary, the date on which entry is sought, the duration and the method proposed for protecting the defendant against damage. The court may grant a limited license for entry upon such terms as justice and equity require. The owner or lessee to whom the limited license to enter is granted shall be liable to the adjoining owner or his lessee for damages occurring as a result of the entry and shall file such bond or liability insurance or both as shall be required by the court.

**History:** Add. 1969, Act 55, Eff. July 29, 1969.

#### **600.2945 Definitions.**

Sec. 2945. As used in this section and sections 1629, 2945 to 2949a, and 5805:

(a) "Alteration" means a material change in a product after the product leaves the control of the manufacturer or seller. Alteration includes a change in the product's design, packaging, or labeling; a change to or removal of a safety feature, warning, or instruction; deterioration or damage caused by failure to observe routine care and maintenance or failure to observe an installation, preparation, or storage procedure; or a change resulting from repair, renovation, reconditioning, recycling, or reclamation of the product.

(b) "Drug" means that term as defined in section 201 of the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 321. However, drug does not include a medical appliance or device.

(c) "Economic loss" means objectively verifiable pecuniary damages arising from medical expenses or medical care, rehabilitation services, custodial care, loss of wages, loss of future earnings, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, or other objectively verifiable monetary losses.

(d) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether injury results.

(e) "Misuse" means use of a product in a materially different manner than the product's intended use. Misuse includes uses inconsistent with the specifications and standards applicable to the product, uses contrary to a warning or instruction provided by the manufacturer, seller, or another person possessing knowledge or training regarding the use or maintenance of the product, and uses other than those for which the product would be considered suitable by a reasonably prudent person in the same or similar circumstances.

(f) "Noneconomic loss" means any type of pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, or other nonpecuniary damages.

(g) "Product" includes any and all component parts to a product.

(h) "Product liability action" means an action based on a legal or equitable theory of liability brought for the death of a person or for injury to a person or damage to property caused by or resulting from the production of a product.

(i) "Production" means manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, inspection, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling.

(j) "Sophisticated user" means a person or entity that, by virtue of training, experience, a profession, or legal obligations, is or is generally expected to be knowledgeable about a product's properties, including a potential hazard or adverse effect. An employee who does not have actual knowledge of the product's potential hazard or adverse effect that caused the injury is not a sophisticated user.

**History:** Add. 1978, Act 495, Eff. Dec. 13, 1978;—Am. 1995, Act 161, Eff. Mar. 28, 1996;—Am. 1995, Act 249, Eff. Mar. 28, 1996.

#### **600.2946 Product liability action; admissible evidence.**

Sec. 2946. (1) It is admissible as evidence in a product liability action that the production of the product was in accordance with the generally recognized and prevailing nongovernmental standards in existence at the time the specific unit of the product was sold or delivered by the defendant to the initial purchaser or user.

(2) In a product liability action brought against a manufacturer or seller for harm allegedly caused by a production defect, the manufacturer or seller is not liable unless the plaintiff establishes that the product was not reasonably safe at the time the specific unit of the product left the control of the manufacturer or seller and that, according to generally accepted production practices at the time the specific unit of the product left the control of the manufacturer or seller, a practical and technically feasible alternative production practice was available that would have prevented the harm without significantly impairing the usefulness or desirability of the product to users and without creating equal or greater risk of harm to others. An alternative production practice is practical and feasible only if the technical, medical, or scientific knowledge relating to production of the product, at the time the specific unit of the product left the control of the manufacturer or seller, was developed, available, and capable of use in the production of the product and was economically feasible for use by the manufacturer. Technical, medical, or scientific knowledge is not economically feasible for use by the manufacturer if use of that knowledge in production of the product would significantly compromise the product's usefulness or desirability.

(3) With regard to the production of a product that is the subject of a product liability action, evidence of a philosophy, theory, knowledge, technique, or procedure that is learned, placed in use, or discontinued after the event resulting in the death of the person or injury to the person or property, which if learned, placed in use, or discontinued before the event would have made the event less likely to occur, is admissible only for the purpose of proving the feasibility of precautions, if controverted, or for impeachment.

(4) In a product liability action brought against a manufacturer or seller for harm allegedly caused by a product, there is a rebuttable presumption that the manufacturer or seller is not liable if, at the time the specific unit of the product was sold or delivered to the initial purchaser or user, the aspect of the product that allegedly caused the harm was in compliance with standards relevant to the event causing the death or injury set forth in a federal or state statute or was approved by, or was in compliance with regulations or standards relevant to the event causing the death or injury promulgated by, a federal or state agency responsible for reviewing the safety of the product. Noncompliance with a standard relevant to the event causing the death or injury set forth in a federal or state statute or lack of approval by, or noncompliance with regulations or standards relevant to the event causing the death or injury promulgated by, a federal or state agency does not raise a presumption of negligence on the part of a manufacturer or seller. Evidence of compliance or noncompliance with a regulation or standard not relevant to the event causing the death or injury is not admissible.

**History:** Add. 1978, Act 495, Eff. Dec. 13, 1978;—Am. 1995, Act 249, Eff. Mar. 28, 1996;—Am. 2023, Act 285, Eff. Feb. 13, 2024.

#### **600.2946a Determination of damages; limitation.**

Sec. 2946a. (1) In an action for product liability, the total amount of damages for noneconomic loss shall not exceed \$280,000.00, unless the defect in the product caused either the person's death or permanent loss of a vital bodily function, in which case the total amount of damages for noneconomic loss shall not exceed \$500,000.00. On the effective date of the amendatory act that added this section, the state treasurer shall adjust the limitations set forth in this subsection so that the limitations are equal to the limitations provided in section 1483. After that date, the state treasurer shall adjust the limitations set forth in this subsection at the end of each calendar year so that they continue to be equal to the limitations provided in section 1483.

(2) In awarding damages in a product liability action, the trier of fact shall itemize damages into economic and noneconomic losses. Neither the court nor counsel for a party shall inform the jury of the limitations

under subsection (1). The court shall adjust an award of noneconomic loss to conform to the limitations under subsection (1).

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

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

**History:** Add. 1995, Act 249, Eff. Mar. 28, 1996.

**Compiler's note:** In subsection (3), the word "perponderance" evidently should read "preponderance."

#### **600.2947 Product liability action; liability of manufacturer or seller.**

Sec. 2947. (1) A manufacturer or seller is not liable in a product liability action for harm caused by an alteration of the product unless the alteration was reasonably foreseeable. Whether there was an alteration of a product and whether an alteration was reasonably foreseeable are legal issues to be resolved by the court.

(2) A manufacturer or seller is not liable in a product liability action for harm caused by misuse of a product unless the misuse was reasonably foreseeable. Whether there was misuse of a product and whether misuse was reasonably foreseeable are legal issues to be resolved by the court.

(3) A manufacturer or seller is not liable in a product liability action if the purchaser or user of the product was aware that use of the product created an unreasonable risk of personal injury and voluntarily exposed himself or herself to that risk and the risk that he or she exposed himself or herself to was the proximate cause of the injury. This subsection does not relieve a manufacturer or seller from a duty to use reasonable care in a product's production.

(4) Except to the extent a state or federal statute or regulation requires a manufacturer to warn, a manufacturer or seller is not liable in a product liability action for failure to provide an adequate warning if the product is provided for use by a sophisticated user.

(5) A manufacturer or seller is not liable in a product liability action if the alleged harm was caused by an inherent characteristic of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability, and that is recognized by a person with the ordinary knowledge common to the community.

(6) In a product liability action, a seller other than a manufacturer is not liable for harm allegedly caused by the product unless either of the following is true:

(a) The seller failed to exercise reasonable care, including breach of any implied warranty, with respect to the product and that failure was a proximate cause of the person's injuries.

(b) The seller made an express warranty as to the product, the product failed to conform to the warranty, and the failure to conform to the warranty was a proximate cause of the person's harm.

**History:** Add. 1978, Act 495, Eff. Dec. 13, 1978;—Am. 1995, Act 249, Eff. Mar. 28, 1996.

#### **600.2948 Death or injury; warnings as evidence.**

Sec. 2948. (1) Evidence is admissible in a product liability action that, before the death of the person or injury to the person or damage to property, pamphlets, booklets, labels, or other written warnings were provided that gave notice to foreseeable users of the material risk of injury, death, or damage connected with the foreseeable use of the product or provided instructions as to the foreseeable uses, applications, or limitations of the product that the defendant knew or should have known.

(2) A defendant is not liable for failure to warn of a material risk that is or should be obvious to a reasonably prudent product user or a material risk that is or should be a matter of common knowledge to persons in the same or similar position as the person upon whose injury or death the claim is based in a product liability action.

(3) In a product liability action brought against a manufacturer or seller for harm allegedly caused by a failure to provide adequate warnings or instructions, a manufacturer or seller is not liable unless the plaintiff proves that the manufacturer knew or should have known about the risk of harm based on the scientific, technical, or medical information reasonably available at the time the specific unit of the product left the control of the manufacturer.

(4) This section does not limit a manufacturer's or seller's duty to use reasonable care in relation to a product after the product has left the manufacturer's or seller's control.

**History:** Add. 1978, Act 495, Eff. Dec. 13, 1978;—Am. 1995, Act 161, Eff. Mar. 28, 1996;—Am. 1995, Act 249, Eff. Mar. 28, 1996.  
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**600.2949 Repealed. 1995, Act 249, Eff. Mar. 28, 1996.**

**Compiler's note:** The repealed section pertained to contributory negligence, diminishment of damages, and frivolous claim or defense.

**600.2949a Knowledge of defective product.**

Sec. 2949a. In a product liability action, if the court determines that at the time of manufacture or distribution the defendant had actual knowledge that the product was defective and that there was a substantial likelihood that the defect would cause the injury that is the basis of the action, and the defendant willfully disregarded that knowledge in the manufacture or distribution of the product, then sections 2946(4), 2946a, 2947(1) to (4), and 2948(2) do not apply.

**History:** Add. 1995, Act 249, Eff. Mar. 28, 1996.

**600.2949b Automated motor vehicle; liability of manufacturer, subcomponent system producer, or motor vehicle mechanic or motor vehicle repair facility; applicability of MCL 600.2945 to 600.2949a; definitions.**

Sec. 2949b. (1) The manufacturer of a vehicle is not liable and must be dismissed from any action for alleged damages resulting from any of the following unless the defect from which the damages resulted was present in the vehicle when it was manufactured:

(a) The conversion or attempted conversion of the vehicle into an automated motor vehicle by another person.

(b) The installation of equipment in the vehicle by another person to convert it into an automated motor vehicle.

(c) The modification by another person of equipment that was installed by the manufacturer in an automated motor vehicle specifically for using the vehicle in automatic mode.

(2) A subcomponent system producer recognized as described in section 244 of the Michigan vehicle code, 1949 PA 300, MCL 257.244, is not liable in a product liability action for damages resulting from the modification of equipment installed by the subcomponent system producer to convert a vehicle to an automated motor vehicle unless the defect from which the damages resulted was present in the equipment when it was installed by the subcomponent system producer.

(3) A motor vehicle mechanic or a motor vehicle repair facility that repairs an automated motor vehicle according to specifications from the manufacturer of the automated motor vehicle is not liable in a product liability action for damages resulting from the repairs.

(4) Sections 2945 to 2949a do not apply in a product liability action to the extent that they are inconsistent with this section.

(5) As used in this section:

(a) "Automated motor vehicle" means that term as defined in section 2b of the Michigan vehicle code, 1949 PA 300, MCL 257.2b.

(b) "Automatic mode" means that term as defined in section 2b of the Michigan vehicle code, 1949 PA 300, MCL 257.2b.

(c) "Motor vehicle mechanic" means that term as defined in section 2 of the motor vehicle service and repair act, 1974 PA 300, MCL 257.1302.

(d) "Motor vehicle repair facility" means that term as defined in section 2 of the motor vehicle service and repair act, 1974 PA 300, MCL 257.1302.

(e) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

**History:** Add. 2013, Act 251, Imd. Eff. Dec. 27, 2013;—Am. 2016, Act 335, Eff. Mar. 9, 2017.

**600.2950 Personal protection order; restraining or enjoining spouse, former spouse, individual with child in common, individual in dating relationship, or person residing or having resided in same household from certain conduct; respondent required to carry concealed weapon; omitting address of residence from documents; issuance, contents, effectiveness, duration, and service of personal protection order; entering order into law enforcement information network; notice; failure to comply with order; false statement to court; enforcement; respondent less than 18 years of age; ownership interest in animal; definitions.**

Sec. 2950. (1) Except as otherwise provided in subsections (26) and (27), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in

which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from doing 1 or more of the following:

- (a) Entering onto premises.
  - (b) Assaulting, attacking, beating, molesting, or wounding a named individual.
  - (c) Threatening to kill or physically injure a named individual.
  - (d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.
  - (e) Purchasing or possessing a firearm.
  - (f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
  - (g) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.
  - (h) If the petitioner is a minor who has been the victim of sexual assault, as that term is defined in section 2950a, by the respondent and if the petitioner is enrolled in a public or nonpublic school that operates any of grades K to 12, attending school in the same building as the petitioner.
  - (i) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.
  - (j) Engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.
  - (k) Any of the following with the intent to cause the petitioner mental distress or to exert control over the petitioner with respect to an animal in which the petitioner has an ownership interest:
    - (i) Injuring, killing, torturing, neglecting, or threatening to injure, kill, torture, or neglect the animal. A restraining order that enjoins conduct under this subparagraph does not prohibit the lawful killing or other use of the animal as described in section 50(11) of the Michigan penal code, 1931 PA 328, MCL 750.50.
    - (ii) Removing the animal from the petitioner's possession.
    - (iii) Retaining or obtaining possession of the animal.
  - (l) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.
- (2) If the respondent is a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment, a police officer licensed or certified by the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of his or her employment, the petitioner shall notify the court of the respondent's occupation before issuance of the personal protection order. This subsection does not apply to a petitioner who does not know the respondent's occupation.
- (3) A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner shall provide the court with a mailing address.
- (4) The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1). In determining whether reasonable cause exists, the court shall consider all of the following:
- (a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.
  - (b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1).
- (5) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1)(a) if all of the following apply:
- (a) The individual to be restrained or enjoined is not the spouse of the moving party.
  - (b) The individual to be restrained or enjoined or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises.
  - (c) The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises.

(6) A court shall not refuse to issue a personal protection order solely because of the absence of any of the following:

- (a) A police report.
- (b) A medical report.
- (c) A report or finding of an administrative agency.
- (d) Physical signs of abuse or violence.

(7) If the court refuses to grant a personal protection order, it shall state immediately in writing the specific reasons it refused to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons it refuses to issue a personal protection order.

(8) A court shall not issue a mutual personal protection order. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court under subsection (1).

(9) A personal protection order is effective and immediately enforceable anywhere in this state after being signed by a judge. Upon service, a personal protection order may also be enforced by another state, an Indian tribe, or a territory of the United States.

(10) The issuing court shall designate a law enforcement agency that is responsible for entering a personal protection order into the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(11) A personal protection order must include all of the following, to the extent practicable in a single form:

(a) A statement that the personal protection order has been entered to restrain or enjoin conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to 1 or more of the following:

(i) If the respondent is 17 years of age or older, immediate arrest and the civil and criminal contempt powers of the court and, if he or she is found guilty of criminal contempt, imprisonment for not more than 93 days and a fine of not more than \$500.00.

(ii) If the respondent is less than 17 years of age, immediate apprehension or being taken into custody and the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(iii) If the respondent violates the personal protection order in a jurisdiction other than this state, the enforcement procedures and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

(b) A statement that the personal protection order is effective and immediately enforceable anywhere in this state after being signed by a judge and that, upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.

(c) A statement listing the type or types of conduct enjoined.

(d) An expiration date stated clearly on the face of the order.

(e) A statement that the personal protection order is enforceable anywhere in this state by any law enforcement agency.

(f) The name of the law enforcement agency designated by the court to enter the personal protection order into the law enforcement information network.

(g) For ex parte orders, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined has been served or has received actual notice of the order and that motion forms and filing instructions are available from the clerk of the court.

(12) A court shall issue an ex parte personal protection order without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by a verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.

(13) A personal protection order issued under subsection (12) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. A motion to modify or rescind the personal protection order must be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual notice of the personal protection order unless good cause is shown for filing the motion after the 14 days have elapsed.

(14) Except as otherwise provided in this subsection, the court shall schedule a hearing on a motion to modify or rescind the ex parte personal protection order within 14 days after the motion is filed. If the respondent is a person described in subsection (2) and the personal protection order prohibits him or her from

purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the motion is filed.

(15) The clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance and without requiring a proof of service on the individual restrained or enjoined:

(a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order.

(b) Provide the petitioner with 2 or more true copies of the personal protection order.

(c) If the respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the personal protection order.

(d) If the personal protection order prohibits the respondent from purchasing or possessing a firearm, notify the county clerk of the respondent's county of residence about the existence and contents of the personal protection order.

(e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order.

(f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order.

(16) The clerk of the court shall inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court under subsection (10) to be immediately entered into the law enforcement information network.

(17) The law enforcement agency that receives a true copy of a personal protection order under subsection (15) or (16) shall immediately and without requiring proof of service enter the personal protection order into the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(18) A personal protection order issued under this section must be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner allowed by the Michigan court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the respondent is less than 18 years of age, the parent, guardian, or custodian of the individual must also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian. A proof of service or proof of oral notice must be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or its immediate enforcement under subsections (21) and (22).

(19) The clerk of the court that issued the personal protection order shall immediately notify the law enforcement agency that received the personal protection order under subsection (15) or (16) if either of the following occurs:

(a) The clerk of the court receives proof that the individual restrained or enjoined has been served.

(b) The personal protection order is rescinded, modified, or extended by court order.

(20) The law enforcement agency that receives information under subsection (19) shall enter the information or cause the information to be entered into the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(21) Subject to subsection (22), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the law enforcement information network as provided by the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(22) If the individual restrained or enjoined has not been served, a law enforcement agency or officer responding to a call alleging a violation of a personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the law enforcement information network that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of

the court issuing the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined must be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. The failure to immediately comply with the personal protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

(23) An individual who is 17 years of age or older and who refuses or fails to comply with a personal protection order under this section is subject to the criminal contempt powers of the court and, if found guilty, must be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual who is less than 17 years of age and who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty provided under this section may be imposed in addition to a penalty that may be imposed for another criminal offense arising from the same conduct.

(24) An individual who knowingly and intentionally makes a false statement to the court in support of his or her petition for a personal protection order is subject to the contempt powers of the court.

(25) A personal protection order issued under this section is also enforceable under section 15b of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15b, and chapter 17.

(26) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1) if any of the following apply:

(a) The respondent is the unemancipated minor child of the petitioner.

(b) The petitioner is the unemancipated minor child of the respondent.

(c) The respondent is a minor child less than 10 years of age.

(27) If the respondent is less than 18 years of age, issuance of a personal protection order under this section is subject to chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(28) A personal protection order that is issued before March 1, 1999 is not invalid on the ground that it does not comply with 1 or more of the requirements added by 1998 PA 477.

(29) For purposes of subsection (1)(k), a petitioner has an ownership interest in an animal if 1 or more of the following are applicable:

(a) The petitioner has a right of property in the animal.

(b) The petitioner keeps or harbors the animal.

(c) The animal is in the petitioner's care.

(d) The petitioner permits the animal to remain on or about premises occupied by the petitioner.

(30) As used in this section:

(a) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(b) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.

(c) "Neglect" means that term as defined in section 50 of the Michigan penal code, 1931 PA 328, MCL 750.50.

(d) "Personal protection order" means an injunctive order issued by the family division of circuit court restraining or enjoining activity and individuals listed in subsection (1).

**History:** Add. 1983, Act 228, Imd. Eff. Nov. 28, 1983;—Am. 1994, Act 58, Eff. July 1, 1994;—Am. 1994, Act 61, Eff. July 1, 1994;—Am. 1994, Act 341, Eff. Apr. 1, 1996;—Am. 1994, Act 402, Eff. Apr. 1, 1995;—Am. 1996, Act 10, Eff. June 1, 1996;—Am. 1997, Act 115, Imd. Eff. Aug. 21, 1997;—Am. 1998, Act 477, Eff. Mar. 1, 1999;—Am. 1999, Act 268, Eff. July 1, 2000;—Am. 2001, Act 200, Eff. Apr. 1, 2002;—Am. 2016, Act 94, Eff. Aug. 1, 2016;—Am. 2016, Act 296, Eff. Jan. 2, 2017;—Am. 2018, Act 146, Eff. Aug. 8, 2018.

**Compiler's note:** In subsection (1)(k)(i), the citation to "50(11)" evidently should read "50(12)."

**600.2950a Personal protection order restraining or enjoining individual from engaging in conduct prohibited under MCL 750.411h, 750.411i, or 750.411s; facts alleging stalking; conduct; respondent required to carry concealed weapon; omitting address of residence from documents; reasons for issuing or refusing to grant order; mutual order prohibited; effectiveness, issuance, contents, and duration of order; duties of court clerk; entering order into L.E.I.N.; service; notice to law enforcement agency; enforcement; refusal or failure to comply; false statement to court; purchase or possession of firearm; person less than 18 years ; issuance to prisoner prohibited; definitions.**



Sec. 2950a. (1) Except as provided in subsections (27), (28), and (30), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin an individual from engaging in conduct that is prohibited under section 411h, 411i, or 411s of the Michigan penal code, 1931 PA 328, MCL 750.411h, 750.411i, and 750.411s. A court shall not grant relief under this subsection unless the petition alleges facts that constitute stalking as defined in section 411h or 411i, or conduct that is prohibited under section 411s, of the Michigan penal code, 1931 PA 328, MCL 750.411h, 750.411i, and 750.411s. Relief may be sought and granted under this subsection whether or not the individual to be restrained or enjoined has been charged or convicted under section 411h, 411i, or 411s of the Michigan penal code, 1931 PA 328, MCL 750.411h, 750.411i, and 750.411s, for the alleged violation.

(2) Except as provided in subsections (27), (28), and (30), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin an individual from engaging in any of the following:

(a) One or more of the acts listed in subsection (3), if the respondent has been convicted of a sexual assault of the petitioner, or the respondent has been convicted of furnishing obscene material to the petitioner under section 142 of the Michigan penal code, 1931 PA 328, MCL 750.142, or a substantially similar law of the United States, another state, or a foreign country or tribal or military law. A court shall grant relief under this subdivision if the court determines that the respondent has been convicted of a sexual assault of the petitioner or that the respondent was convicted of furnishing obscene material to the petitioner under section 142 of the Michigan penal code, 1931 PA 328, MCL 750.142, or a substantially similar law of the United States, another state, or a foreign country or tribal or military law.

(b) One or more of the acts listed in subsection (3), if the petitioner has been subjected to, threatened with, or placed in reasonable apprehension of sexual assault by the individual to be enjoined. A court shall not grant relief under this subdivision unless the petition alleges facts that demonstrate that the respondent has perpetrated or threatened sexual assault against the petitioner. Evidence that a respondent has furnished obscene material to a minor petitioner is evidence that the respondent has threatened sexual assault against the petitioner. Relief may be sought and granted under this subdivision regardless of whether the individual to be restrained or enjoined has been charged with or convicted of sexual assault or an offense under section 142 of the Michigan penal code, 1931 PA 328, MCL 750.142, or a substantially similar law of the United States, another state, or a foreign country or tribal or military law.

(3) The court may restrain or enjoin an individual against whom a protection order is sought under subsection (2) from 1 or more of the following:

- (a) Entering onto premises.
- (b) Threatening to sexually assault, kill, or physically injure petitioner or a named individual.
- (c) Purchasing or possessing a firearm.
- (d) Interfering with the petitioner's efforts to remove the petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- (e) Interfering with the petitioner at the petitioner's place of employment or education or engaging in conduct that impairs the petitioner's employment or educational relationship or environment.
- (f) Following or appearing within the sight of the petitioner.
- (g) Approaching or confronting the petitioner in a public place or on private property.
- (h) Appearing at the petitioner's workplace or residence.
- (i) Entering onto or remaining on property owned, leased, or occupied by the petitioner.
- (j) Contacting the petitioner by telephone.
- (k) If the petitioner is a minor who is enrolled in a public or nonpublic school that operates any of grades K to 12, attending school in the same building as the petitioner.
- (l) Sending mail or electronic communications to the petitioner.
- (m) Placing an object on, or delivering an object to, property owned, leased, or occupied by the petitioner.
- (n) Engaging in conduct that is prohibited under section 411s of the Michigan penal code, 1931 PA 328, MCL 750.411s.

(o) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence or sexual assault.

(4) Section 520j of the Michigan penal code, 1931 PA 328, MCL 750.520j, applies in any hearing on a petition for, a motion to modify or terminate, or an alleged violation of a personal protection order requested or issued under subsection (2), except as follows:

(a) The written motion and offer of proof must be filed at least 24 hours before a hearing on a petition to issue a personal protection order or on an alleged violation of a personal protection order.

(b) The written motion and offer of proof must be filed at the same time that a motion to modify or terminate a personal protection order is filed.

(5) If the respondent to a petition under this section is an individual who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment, a police officer licensed or certified by the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, a department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of his or her employment, the petitioner shall notify the court of the respondent's occupation before the personal protection order is issued. This subsection does not apply to a petitioner who does not know the respondent's occupation.

(6) A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner shall provide the court a mailing address.

(7) If a court issues or refuses to issue a personal protection order, the court shall immediately state in writing the specific reasons for issuing or refusing to issue the personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue a personal protection order.

(8) A court shall not issue a mutual personal protection order. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court under subsection (1) or (2).

(9) A personal protection order is effective and immediately enforceable anywhere in this state after being signed by a judge. Upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.

(10) The court that issues a personal protection order shall designate a law enforcement agency that is responsible for entering the personal protection order into the L.E.I.N.

(11) A personal protection order issued under this section must include all of the following, to the extent practicable in a single form:

(a) A statement that the personal protection order has been entered to enjoin or restrain conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to 1 or more of the following:

(i) If the respondent is 17 years of age or older, immediate arrest and the civil and criminal contempt powers of the court. If the respondent is found guilty of criminal contempt, he or she must be imprisoned for not more than 93 days and may be fined not more than \$500.00.

(ii) If the respondent is less than 17 years of age, immediate apprehension or being taken into custody and the dispositional alternatives listed in section 18 of chapter XIII A of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(iii) If the respondent violates the personal protection order in a jurisdiction other than this state, the enforcement procedures and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

(b) A statement that the personal protection order is effective and immediately enforceable anywhere in this state after being signed by a judge, and that on service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.

(c) A statement listing each type of conduct enjoined.

(d) An expiration date stated clearly on the face of the order.

(e) A statement that the personal protection order is enforceable anywhere in this state by any law enforcement agency.

(f) The name of the law enforcement agency designated by the court to enter the personal protection order into the L.E.I.N.

(g) For an ex parte order, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined is served or receives actual notice of the personal protection order and that motion forms and filing instructions are available from the clerk of the court.

(12) A court shall not issue a personal protection order ex parte without written or oral notice to the individual enjoined or his or her attorney unless it clearly appears from specific facts shown by a verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will precipitate adverse action before a personal protection order can be issued.

(13) A personal protection order issued under subsection (12) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. A motion to modify or rescind the personal protection order must be filed within 14 days after the order is served or after the individual restrained or enjoined receives actual notice of the personal protection order unless good cause is shown for filing the motion after 14 days have elapsed.

(14) Except as otherwise provided in this subsection, a court shall schedule a hearing on a motion to modify or rescind an ex parte personal protection order within 14 days after the motion to modify or rescind is filed. If the respondent is a person described in subsection (5) and the personal protection order prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the motion to modify or rescind is filed.

(15) The clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance without requiring proof of service on the individual restrained or enjoined:

(a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order.

(b) Provide the petitioner with 2 or more true copies of the personal protection order.

(c) If the individual restrained or enjoined is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency of the existence of the personal protection order.

(d) If the personal protection order prohibits the individual restrained or enjoined from purchasing or possessing a firearm, notify the county clerk of the individual's county of residence of the existence and content of the personal protection order.

(e) If the individual restrained or enjoined is identified in the pleadings as a department of corrections employee, notify the department of corrections of the existence of the personal protection order.

(f) If the individual restrained or enjoined is identified in the pleadings as a person who may have access to information concerning the petitioner or a child of the petitioner or individual and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located of the existence of the personal protection order.

(16) The clerk of a court that issues a personal protection order shall inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court under subsection (10) to be immediately entered into the L.E.I.N.

(17) The law enforcement agency that receives a true copy of a personal protection order under subsection (15) or (16) shall immediately, without requiring proof of service, enter the personal protection order into the L.E.I.N.

(18) A personal protection order issued under this section must be served personally, by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other method allowed by the Michigan court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the individual restrained or enjoined is less than 18 years of age, the parent, guardian, or custodian of the individual must also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian. A proof of service or proof of oral notice must be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or immediate enforcement under subsection (21) or (22).

(19) The clerk of the court that issued a personal protection order shall immediately notify the law enforcement agency that received the personal protection order under subsection (15) or (16) if either or both of the following occur:

(a) The clerk of the court receives proof that the individual restrained or enjoined has been served.

(b) The personal protection order is rescinded, modified, or extended by court order.

(20) The law enforcement agency that receives information under subsection (19) shall enter the information or cause the information to be entered into the L.E.I.N.

(21) Subject to subsection (22), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the L.E.I.N.

(22) If the individual restrained or enjoined by a personal protection order has not been served, a law

enforcement agency or officer responding to a call alleging a violation of the personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the L.E.I.N. that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of the court that issued the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined must be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. Failure to immediately comply with the personal protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

(23) An individual 17 years of age or older who refuses or fails to comply with a personal protection order issued under this section is subject to the criminal contempt powers of the court and, if found guilty of criminal contempt, must be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual less than 17 years of age who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.

(24) An individual who knowingly and intentionally makes a false statement to a court in support of his or her petition for a personal protection order is subject to the contempt powers of the court.

(25) A personal protection order issued under this section is also enforceable under section 15b of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15b, and chapter 17.

(26) A personal protection order issued under this section may enjoin or restrain an individual from purchasing or possessing a firearm.

(27) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1) or (3) if any of the following apply:

- (a) The respondent is the unemancipated minor child of the petitioner.
- (b) The petitioner is the unemancipated minor child of the respondent.
- (c) The respondent is a minor child less than 10 years of age.

(28) If the respondent is less than 18 years old, issuance of a personal protection order under this section is subject to chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(29) A personal protection order issued before March 1, 1999 is not invalid on the ground that it does not comply with 1 or more of the requirements added by 1998 PA 476.

(30) A court shall not issue a personal protection order under this section if the petitioner is a prisoner. If a personal protection order is issued in violation of this subsection, a court shall rescind the personal protection order upon notification and verification that the petitioner is a prisoner.

(31) As used in this section:

(a) "Convicted" means 1 of the following:

(i) The subject of a judgment of conviction or a probation order entered in a court that has jurisdiction over criminal offenses, including a tribal court or a military court.

(ii) Assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, if the individual's status of youthful trainee is revoked and an adjudication of guilt is entered.

(iii) The subject of an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28.

(iv) The subject of an order of disposition or other adjudication in a juvenile matter in another state or country.

(b) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.

(c) "L.E.I.N." means the law enforcement information network administered under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(d) "Personal protection order" means an injunctive order issued by the family division of circuit court restraining or enjoining conduct prohibited under subsection (1) or (3).

(e) "Prisoner" means a person subject to incarceration, detention, or admission to a prison who is accused

of, convicted of, sentenced for, or adjudicated delinquent for violations of federal, state, or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program.

(f) "Sexual assault" means an act, attempted act, or conspiracy to engage in an act of criminal conduct as defined in section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or an offense under a law of the United States, another state, or a foreign country or tribal or military law that is substantially similar to an offense listed in this subdivision.

**History:** Add. 1992, Act 262, Eff. Jan. 1, 1993;—Am. 1994, Act 61, Eff. July 1, 1994;—Am. 1994, Act 341, Eff. Apr. 1, 1996;—Am. 1994, Act 404, Eff. Apr. 1, 1995;—Am. 1997, Act 115, Imd. Eff. Aug. 21, 1997;—Am. 1998, Act 476, Eff. Mar. 1, 1999;—Am. 1999, Act 268, Eff. July 1, 2000;—Am. 2001, Act 196, Eff. Apr. 1, 2002;—Am. 2001, Act 201, Eff. Apr. 1, 2002;—Am. 2010, Act 19, Imd. Eff. Mar. 25, 2010;—Am. 2016, Act 296, Eff. Jan. 2, 2017;—Am. 2018, Act 146, Eff. Aug. 8, 2018.

#### **600.2950b Forms; liability of individual providing assistance.**

Sec. 2950b. (1) The state court administrative office shall develop and make available forms for use by an individual who wishes to proceed without an attorney. The forms shall include at least a petition for relief, a notice of hearing, and proof of service for a personal protection order under section 2950 or 2950a. The forms shall be written in plain English in a simple and easily understood format, and shall be limited, if practicable, to 1 page in length. Instructions for the forms shall be written in plain English and shall include a simple and easily understood explanation of the proper method of service and filing of the proof of service.

(2) The standard personal protection order form, at a minimum, shall contain all of the information required under section 2950 or 2950a.

(3) The state court administrative office shall develop and make available standardized forms for use by individuals restrained or enjoined without notice to move to modify or to rescind a personal protection order and to request a hearing.

(4) The court shall provide a form prepared under this section without charge. Upon request, the court may provide assistance, but not legal assistance, to an individual in completing a form prepared under this section and the personal protection order form if the court issues such an order, and may instruct the individual regarding the requirements for proper service of the order.

(5) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an individual other than a court employee who provides assistance under section 2950c is presumed to be acting in good faith and is not liable in a civil action for damages for acts or omissions in providing the assistance, except acts or omissions amounting to gross negligence or willful and wanton misconduct.

**History:** Add. 1994, Act 61, Eff. July 1, 1994;—Am. 1994, Act 403, Eff. Apr. 1, 1995;—Am. 2000, Act 112, Eff. July 1, 2000.

#### **600.2950c Assistance with personal protection order; domestic violence victim advocate.**

Sec. 2950c. (1) The family division of the circuit court in each county may provide a domestic violence victim advocate to assist victims of domestic violence in obtaining a personal protection order. The court may use the services of a public or private agency or organization that has a record of service to victims of domestic violence to provide the assistance. A domestic violence victim advocate may provide, but is not limited to providing, all of the following assistance:

(a) Informing a victim of the availability of, and assisting the victim in obtaining, serving, modifying, or rescinding, a personal protection order.

(b) Providing an interpreter for a case involving domestic violence including a request for a personal protection order.

(c) Informing a victim of the availability of shelter, safety plans, counseling, other social services, and generic written materials about Michigan law.

(2) Notwithstanding subsection (1), a domestic violence victim advocate shall not represent or advocate for a domestic violence victim in court.

(3) Providing assistance in accordance with this section does not violate section 916.

**History:** Add. 2000, Act 112, Eff. July 1, 2000.

#### **600.2950h Definitions.**

Sec. 2950h. As used in this section and sections 2950i, 2950j, 2950k, 2950l, and 2950m:

(a) "Foreign protection order" means an injunction or other order issued by a court of another state, Indian tribe, or United States territory for the purpose of preventing a person's violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person. Foreign protection order includes temporary and final orders issued by civil and criminal courts (other than a support or child custody order issued pursuant to state divorce and child custody laws, except to the extent that such an order



is entitled to full faith and credit under other federal law), whether obtained by filing an independent action or by joining a claim to an action, if a civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(b) "LEIN" means the law enforcement information network regulated under the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(c) "NCIC protection order file" means the national crime information center protection order file maintained by the United States department of justice, federal bureau of investigation.

**History:** Add. 2001, Act 206, Eff. Apr. 1, 2002.

#### **600.2950i Foreign protection order; validity; affirmative defenses.**

Sec. 2950i. (1) A foreign protection order is valid if all of the following conditions are met:

(a) The issuing court had jurisdiction over the parties and subject matter under the laws of the issuing state, tribe, or territory.

(b) Reasonable notice and opportunity to be heard is given to the respondent sufficient to protect the respondent's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided to the respondent within the time required by state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(2) All of the following may be affirmative defenses to any charge or process filed seeking enforcement of a foreign protection order:

(a) Lack of jurisdiction by the issuing court over the parties or subject matter.

(b) Failure to provide notice and opportunity to be heard.

(c) Lack of filing of a complaint, petition, or motion by or on behalf of a person seeking protection in a civil foreign protection order.

**History:** Add. 2001, Act 206, Eff. Apr. 1, 2002.

#### **600.2950j Foreign protection order; subject to full faith and credit and enforcement; child custody or support provision.**

Sec. 2950j. (1) A valid foreign protection order shall be accorded full faith and credit by the court and shall be subject to the same enforcement procedures and penalties as if it were issued in this state.

(2) A child custody or support provision within a valid foreign protection order shall be accorded full faith and credit by the court and shall be subject to the same enforcement procedures and penalties as any provision within a personal protection order issued in this state. This subsection shall not be construed to preclude law enforcement officers' compliance with the child protection law, 1975 PA 238, MCL 722.621 to 722.638.

**History:** Add. 2001, Act 206, Eff. Apr. 1, 2002.

#### **600.2950k Foreign protection order; issuance against petitioner and respondent; conditions; "spouse or intimate partner" defined.**

Sec. 2950k. (1) A foreign protection order sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent is entitled to full faith and credit against the respondent and is enforceable against the respondent.

(2) A foreign protection order sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent is not entitled to full faith and credit and is not enforceable against the petitioner unless both of the following conditions are met:

(a) The respondent filed a cross- or counter-petition, complaint, or other written pleading seeking the foreign protection order.

(b) The issuing court made specific findings against both the petitioner and the respondent and determined that each party was entitled to relief.

(3) For purposes of this section, "spouse or intimate partner" means all of the following:

(a) Spouse.

(b) Former spouse.

(c) An individual with whom petitioner has had a child in common.

(d) An individual residing or having resided in the same household as petitioner.

(e) An individual with whom petitioner has or has had a dating relationship as that term is defined in section 2950.

**History:** Add. 2001, Act 206, Eff. Apr. 1, 2002.

#### **600.2950l Foreign protection order.**

Sec. 2950l. (1) Law enforcement officers, prosecutors, and the court shall enforce a foreign protection

order other than a conditional release order or probation order issued by a court in a criminal proceeding in the same manner that they would enforce a personal protection order issued in this state under section 2950 or 2950a or section 2(h) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, unless indicated otherwise in this section.

(2) A foreign protection order that is a conditional release order or a probation order issued by a court in a criminal proceeding shall be enforced pursuant to section 2950m of this act, section 15(1)(g) of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15, the uniform criminal extradition act, 1937 PA 144, MCL 780.1 to 780.31, or the uniform rendition of accused persons act, 1968 PA 281, MCL 780.41 to 780.45.

(3) A law enforcement officer may rely upon a copy of any protection order that appears to be a foreign protection order and that is provided to the law enforcement officer from any source if the putative foreign protection order appears to contain all of the following:

- (a) The names of the parties.
- (b) The date the protection order was issued, which is prior to the date when enforcement is sought.
- (c) The terms and conditions against respondent.
- (d) The name of the issuing court.
- (e) The signature of or on behalf of a judicial officer.
- (f) No obvious indication that the order is invalid, such as an expiration date that is before the date enforcement is sought.

(4) The fact that a putative foreign protection order that an officer has been shown cannot be verified on L.E.I.N. or the NCIC national protection order file is not grounds for a law enforcement officer to refuse to enforce the terms of the putative foreign protection order, unless it is apparent to the officer that the putative foreign protection order is invalid. A law enforcement officer may rely upon the statement of petitioner that the putative foreign protection order that has been shown to the officer remains in effect and may rely upon the statement of petitioner or respondent that respondent has received notice of that order.

(5) If a person seeking enforcement of a foreign protection order does not have a copy of the foreign protection order, the law enforcement officer shall attempt to verify through L.E.I.N., or the NCIC protection order file, administrative messaging, contacting the court that issued the foreign protection order, contacting the law enforcement agency in the issuing jurisdiction, contacting the issuing jurisdiction's protection order registry, or any other method the law enforcement officer believes to be reliable, the existence of the foreign protection order and all of the following:

- (a) The names of the parties.
- (b) The date the foreign protection order was issued, which is prior to the date when enforcement is sought.
- (c) Terms and conditions against respondent.
- (d) The name of the issuing court.
- (e) No obvious indication that the foreign protection order is invalid, such as an expiration date that is before the date enforcement is sought.

(6) If subsection (5) applies, the law enforcement officer shall enforce the foreign protection order if the existence of the order and the information listed under subsection (5) are verified, subject to subsection (9).

(7) If a person seeking enforcement of a foreign protection order does not have a copy of the foreign protection order, and the law enforcement officer cannot verify the order as described in subsection (5), the law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law.

(8) When enforcing a foreign protection order, the law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law. The penalties provided for under sections 2950 and 2950a and chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, may be imposed in addition to a penalty that may be imposed for any criminal offense arising from the same conduct.

(9) If there is no evidence that the respondent has been served with or received notice of the foreign protection order, the law enforcement officer shall serve the respondent with a copy of the foreign protection order, or advise the respondent about the existence of the foreign protection order, the name of the issuing court, the specific conduct enjoined, the penalties for violating the order in this state, and, if the officer is aware of the penalties in the issuing jurisdiction, the penalties for violating the order in the issuing jurisdiction. The officer shall enforce the foreign protection order and shall provide the petitioner, or cause the petitioner to be provided, with proof of service or proof of oral notice. The officer also shall provide the issuing court, or cause the issuing court to be provided, with a proof of service or proof of oral notice, if the address of the issuing court is apparent on the face of the foreign protection order or otherwise is readily available to the officer. If the foreign protection order is entered into L.E.I.N. or the NCIC protection order

file, the officer shall provide the L.E.I.N. or the NCIC protection order file entering agency, or cause the L.E.I.N. or NCIC protection order file entering agency to be provided, with a proof of service or proof of oral notice. If there is no evidence that the respondent has received notice of the foreign protection order, the respondent shall be given an opportunity to comply with the foreign protection order before the officer makes a custodial arrest for violation of the foreign protection order. The failure to comply immediately with the foreign protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the code of criminal procedure, 1927 PA 175, MCL 712A.14.

(10) A law enforcement officer, prosecutor, or court personnel acting in good faith are immune from civil and criminal liability in any action arising from the enforcement of a foreign protection order. This immunity does not in any manner limit or imply an absence of immunity in other circumstances.

**History:** Add. 2001, Act 197, Eff. Apr. 1, 2002.

#### **600.2950m Foreign protection order; violation as misdemeanor; penalty.**

Sec. 2950m. A person who violates a foreign protection order that is a conditional release order or a probation order issued by a court in a criminal proceeding is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$500.00, or both.

**History:** Add. 2001, Act 197, Eff. Apr. 1, 2002.

#### **600.2950n Order to transfer billing and rights to wireless telephone number to petitioner; conditions; forms.**

Sec. 2950n. (1) In an action described in section 2950(1) or 2950a(1), or in another action if the respondent in the action has been ordered, in a separate criminal case, to have no contact with the petitioner or a minor child of whom the petitioner has legal custody, the court may enter an order to allow the petitioner to maintain an existing wireless telephone number, or the wireless telephone number of a minor child of whom the petitioner has legal custody, if the petitioner is not the named customer, by ordering the wireless telephone service provider to transfer the billing responsibility for and rights to the wireless telephone number to the petitioner.

(2) An order issued under subsection (1) must list the name and billing telephone number of the named customer, the name and telephone number of the petitioner, and each telephone number to be transferred to the petitioner. The court shall ensure that the contact information of the petitioner is not provided to the customer or respondent.

(3) This section and section 2950o do not affect the ability of the court to determine the temporary use, possession, and control of personal property or to apportion the assets and debts of the parties as otherwise provided by law.

(4) The state court administrative office shall develop any forms necessary to effectuate this section and section 2950o.

**History:** Add. 2016, Act 269, Eff. Sept. 29, 2016.

#### **600.2950o Order issued under MCL 600.2950n; service; inability of wireless telephone service provider to effectuate order; notice; suspension of order; assumption of financial responsibility by petitioner; application of requirements for establishment of service; liability of provider and employees.**

Sec. 2950o. (1) An order issued under section 2950n must be served on the wireless telephone service provider as required under the Michigan court rules.

(2) If the wireless telephone service provider cannot operationally or technically effectuate an order issued under section 2950n because of any of the following circumstances, the wireless telephone service provider shall so notify the petitioner within 72 hours after the wireless telephone service provider receives the order:

- (a) The customer has terminated service for the number.
- (b) Differences in network technology prevent the functionality of a device on the network.
- (c) There are geographic or other limitations on network or service availability.
- (d) Any other circumstance that prevents the order from being operationally or technically effectuated.

(3) If a wireless telephone service provider notifies a petitioner under subsection (2), the order issued under section 2950n is automatically suspended.

(4) On transfer of billing responsibility for and rights to a wireless telephone number to a petitioner by a wireless telephone service provider under section 2950n and this section, the petitioner shall assume all financial responsibility for service to the transferred number, monthly service costs, and costs for any mobile

device associated with the number.

(5) Section 2950n and this section do not preclude a wireless telephone service provider from applying any routine and customary requirements for the establishment of service to the petitioner as part of a transfer of billing responsibility for a wireless telephone number and any devices associated with the number, including, but not limited to, identification, financial information, and customer preferences.

(6) A wireless telephone service provider and its employees and agents are not liable for any actions taken in accordance with this section or a court order issued under section 2950n.

**History:** Add. 2016, Act 270, Eff. Sept. 29, 2016.

**600.2951 "Approved signaling device" and "pistol" defined; use of approved signaling device; strict liability for damages; exception.**

Sec. 2951. (1) As used in this section:

(a) "Approved signaling device" means a pistol that is a signaling device approved by the United States coast guard under regulations issued under 46 USC 3306 or under 46 USC 4302, or predecessor statutes, and including, but not limited to, 46 CFR parts 160 and 161.

(b) "Pistol" means a firearm, loaded or unloaded, 26 inches or less in length, or any firearm, loaded or unloaded, that by its construction and appearance conceals it as a firearm.

(2) A person who uses an approved signaling device shall be strictly liable for any damages caused to person or property by that use unless the person reasonably believes that its use is necessary for the safety of himself or herself or of another person on the waters of this state or in an aircraft.

**History:** Add. 1982, Act 186, Eff. July 1, 1982;—Am. 2012, Act 244, Eff. Jan. 1, 2013.

**600.2952 Failure of maker to pay amount of dishonored check, draft, or order; liability; written demand for payment; delivery and text; effect of payment before trial; jurisdiction of action.**

Sec. 2952. (1) In addition to applicable penal sanctions, a person who makes, draws, utters, or delivers a check, draft, or order for payment of money upon a bank or other depository, person, firm, or corporation that refuses to honor the check, draft, or order for lack of funds or credit to pay or because the maker has no account with the drawee is liable for the amount of the dishonored check, draft, or order, plus a processing fee, civil damages, and costs, as provided in this section.

(2) A payee or an agent of a payee may make a written demand for payment of a check, draft, or order of the type specified in subsection (1), which demand may be delivered to the maker by first-class mail. The text of the written demand shall be as follows:

"A check, draft, or order for payment of money drawn by you for \$\_\_\_\_\_ was returned to me/us/our client (client's name) dishonored for:

☐ Insufficient funds

☐ No account

This notice is a formal demand for payment of the full amount of the dishonored check, draft, or order plus a processing fee of \$25.00 for a total amount of \$\_\_\_\_\_. If you pay this total amount within 7 days, excluding weekends and holidays, after the date this notice was mailed, no further civil action will be taken against you.

If you do not pay the \$\_\_\_\_\_ as requested above, but within 30 days after the date this notice was mailed you pay the amount of the dishonored check, draft, or order plus a \$35.00 processing fee, for a total amount of \$\_\_\_\_\_, no further civil action will be taken against you.

If you fail to pay either amount indicated above, I/we/our client will be authorized by state law to bring a civil action against you to determine your legal responsibility for payment of the check, draft, or order and civil damages and costs allowed by law.

If you dispute the dishonoring of this check, draft, or order, you should also contact your bank or financial institution immediately."

(3) The maker of a dishonored check, draft, or order for payment of money is liable to the payee as provided in subsection (4) if the maker fails to pay 1 of the following in cash to the payee or a designated agent of the payee after the mailing of a written demand for payment pursuant to subsection (2):

(a) Within 7 days, excluding weekends and holidays, after the date the written demand provided in subsection (2) is mailed, the full amount of the dishonored check, draft, or order, plus a processing fee of \$25.00.

(b) Within 30 days after the date of the mailing of the notice provided in subsection (2), the full amount of the dishonored check, draft, or order, plus a processing fee of \$35.00.

(4) Except as otherwise provided in subsection (5), a maker who fails to make payment pursuant to

subsection (3) and who is found responsible for payment in a civil action is liable to the payee for payment of all of the following:

(a) The full amount of the check, draft, or order.

(b) Civil damages of 2 times the amount of the dishonored check, draft, or order or \$100.00, whichever is greater.

(c) Costs of \$250.00.

(5) Subsection (4) does not apply if, before the trial of an action brought pursuant to this section, the maker pays to the payee or a designated agent of the payee, in cash, the total of the amounts described in subsection (3)(b), plus reasonable costs, not exceeding \$250.00, as agreed to by the parties.

(6) An action under this section may be brought in the small claims division of the district court, if it does not exceed the jurisdiction of the small claims division, or in any other appropriate court. If the amount of the check exceeds the jurisdiction of the small claims division, the action may still be brought in the small claims division, but the amount of damages awarded shall not exceed the jurisdiction of the small claims division.

**History:** Add. 1984, Act 276, Eff. Mar. 29, 1985;—Am. 1998, Act 313, Eff. Jan. 1, 1999.

**600.2953 Retail fraud; liability; civil damages; demand for payment; text; noncompliance; effect of payment; jurisdiction; civil action against parent; formal police report; violation by merchant precluding recovery.**

Sec. 2953. (1) In addition to applicable penal sanctions, a person who commits an act for which he or she could be charged with retail fraud in the first, second, or third degree under sections 356c and 356d of the Michigan penal code, 1931 PA 328, MCL 750.356c and 750.356d, is liable to the merchant who is the victim of the act for the full retail price of unrecovered property or recovered property that is not in salable condition, and civil damages of 10 times the retail price of the property, but not less than \$50.00 and not more than \$200.00.

(2) The merchant who is the victim of retail fraud in the first, second, or third degree, or an agent of the merchant, may make a written demand for payment of the amount for which the person who committed the act is liable under subsection (1). Except for a sole proprietorship, a member of management, other than the initial detaining person, shall evaluate the validity of the accusation that the person committed the act and shall approve the accusation in writing before a written demand for payment is issued. The demand for payment may be delivered to the person from whom payment is demanded by first-class mail. The text of the written demand shall be as follows:

"We have cause to believe that on (date) you, or your minor child (child's name), committed retail fraud in the first, second, or third degree by (description of action and property involved) in our store or in its immediate vicinity.

State law authorizes us to demand in writing that you do all of the following, as applicable:

☐ Return the property in salable condition or pay to us \$ \_\_\_\_\_, which represents the full retail price or the remaining balance of the full retail price of the property.

☐ Pay to us \$ \_\_\_\_\_, which represents the full retail price of the recovered property that is not in salable condition.

☐ Pay to us civil damages in an amount equal to 10 times the retail price of the property involved, but not less than \$50.00 or more than \$200.00, equaling a total amount of \$ \_\_\_\_\_.

This notice is a formal demand for return of the property involved, if applicable, and the payment of the amounts indicated above, equaling a total amount of \$ \_\_\_\_\_. If you return any unrecovered property and pay the amounts indicated above to us within 30 days after the date this notice was mailed, we will not take any further civil action against you.

You are not required to respond to this demand if you believe that you or your minor child are not guilty of committing retail fraud or if you choose not to respond. If you fail to comply with this demand, we will be authorized by state law to bring a civil action against you to determine your legal responsibility for the return of any unrecovered property and the payment of the amounts indicated above plus the cost of the action, including reasonable attorney fees.

These civil proceedings do not prevent criminal prosecution for the alleged act of retail fraud."

(3) If the person to whom a written demand is made under subsection (2) complies with the written demand within 30 days after the date the written demand is mailed, that person shall incur no further civil liability to the merchant from the act of retail fraud.

(4) A person who commits an act described in subsection (1) and who fails to comply with a written demand under subsection (2) is liable to the merchant for the full retail price of the property, unless the property was recovered in salable condition, plus civil damages of 10 times the retail price of the property but not less than \$50.00 or more than \$200.00, and costs of the action, including reasonable attorney fees.



(5) If a civil action is filed pursuant to this section and before the trial of the action is commenced the person to whom a written demand was made under subsection (2) pays the merchant in cash the amount demanded, subsection (4) does not apply.

(6) An action under this section may be brought in the small claims division of the district court or in any other court of competent jurisdiction. If the amount demanded exceeds the jurisdiction of the small claims division, the action may still be brought in the small claims division, but the amount recovered shall not exceed the jurisdiction of the small claims division.

(7) A merchant may recover damages in an amount allowable under this section in a civil action in a court of competent jurisdiction against the parent or parents of an unemancipated minor who lives with his or her parent or parents and who commits an act described in subsection (1).

(8) A merchant may recover the amount for which a person is civilly liable under this section only if a formal police report is filed with a local law enforcement agency that has jurisdiction over the location where the violation took place, which report sets forth facts alleging that the person has committed retail fraud in the first, second, or third degree or violated a local ordinance substantially corresponding to section 218, 356, 356c, or 356d of the Michigan penal code, 1931 PA 328, MCL 750.218, 750.356, 750.356c, and 750.356d, regardless of the outcome of any criminal action.

(9) Notwithstanding any other provision of this section, a merchant shall not recover civil damages for an act of retail fraud in the first, second, or third degree with regard to a particular item of property if the merchant violated section 3 of 1976 PA 449, MCL 445.353, with regard to that item of property and the violation was not caused by the person who committed the act of retail fraud.

**History:** Add. 1988, Act 50, Eff. June 1, 1988;—Am. 1998, Act 313, Eff. Jan. 1, 1999.

#### **600.2953a Motion picture recording violation.**

Sec. 2953a. (1) A person who commits an act that constitutes a motion picture recording violation is liable to a person injured by the violation for 1 or more of the following:

(a) Actual damages.

(b) Exemplary damages of not more than \$1,000.00.

(c) If the person who committed the violation was acting for direct or indirect commercial advantage or financial gain, exemplary damages of not more than \$50,000.00.

(d) Reasonable attorney fees and costs.

(2) If a person who commits an act that constitutes a motion picture recording violation is an unemancipated minor who lives with his or her parent or parents, the parent or parents are also liable to a person injured by the violation for damages allowable under this section.

(3) A person injured by a motion picture recording violation may recover damages described in subsection (1) only if a formal incident report that contains factual allegations that the defendant committed a motion picture recording violation is filed with a local law enforcement agency with jurisdiction over the location where the violation took place. However, recovery under this section is not dependent on the outcome of a criminal prosecution.

(4) A person injured by a motion picture recording violation may bring an action to enjoin a person from the unauthorized recording, receipt, or transmission of a recording or transmission of a motion picture or a part of a motion picture obtained or made by a motion picture recording violation or from committing a motion picture recording violation. A person may bring an action under this subsection regardless of whether the person has suffered or will suffer actual damages.

(5) An action under this section is in addition to any other criminal or civil penalties or remedies provided by law.

(6) As used in this section:

(a) "Motion picture recording violation" means a violation of section 465a of the Michigan penal code, 1931 PA 328, MCL 750.465a.

(b) "A person injured by a motion picture recording violation" includes, but is not limited to, the owner or lessee of the theatrical facility where the motion picture that is the subject of the violation was being shown.

**History:** Add. 2004, Act 450, Eff. Mar. 28, 2005.

#### **600.2954 Maintaining civil action against individual engaging in prohibited conduct; "victim" defined.**

Sec. 2954. (1) A victim may maintain a civil action against an individual who engages in conduct that is prohibited under section 411h or 411i of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.411h and 750.411i of the Michigan Compiled Laws, for damages incurred by the victim as a result of that conduct. A victim may also seek and be awarded exemplary damages, costs of the action, and

reasonable attorney fees in an action brought under this section.

(2) A civil action may be maintained under subsection (1) whether or not the individual who is alleged to have engaged in conduct prohibited under section 411h or 411i of Act No. 328 of the Public Acts of 1931 has been charged or convicted under section 411h or 411i of Act No. 328 of the Public Acts of 1931 for the alleged violation.

(3) As used in this section, "victim" means that term as defined in section 411h of Act No. 328 of the Public Acts of 1931.

**History:** Add. 1992, Act 262, Eff. Jan. 1, 1993.

#### **600.2955 Scientific or expert opinion or evidence; admissibility.**

Sec. 2955. (1) In an action for the death of a person or for injury to a person or property, a scientific opinion rendered by an otherwise qualified expert is not admissible unless the court determines that the opinion is reliable and will assist the trier of fact. In making that determination, the court shall examine the opinion and the basis for the opinion, which basis includes the facts, technique, methodology, and reasoning relied on by the expert, and shall consider all of the following factors:

(a) Whether the opinion and its basis have been subjected to scientific testing and replication.

(b) Whether the opinion and its basis have been subjected to peer review publication.

(c) The existence and maintenance of generally accepted standards governing the application and interpretation of a methodology or technique and whether the opinion and its basis are consistent with those standards.

(d) The known or potential error rate of the opinion and its basis.

(e) The degree to which the opinion and its basis are generally accepted within the relevant expert community. As used in this subdivision, "relevant expert community" means individuals who are knowledgeable in the field of study and are gainfully employed applying that knowledge on the free market.

(f) Whether the basis for the opinion is reliable and whether experts in that field would rely on the same basis to reach the type of opinion being proffered.

(g) Whether the opinion or methodology is relied upon by experts outside of the context of litigation.

(2) A novel methodology or form of scientific evidence may be admitted into evidence only if its proponent establishes that it has achieved general scientific acceptance among impartial and disinterested experts in the field.

(3) In an action alleging medical malpractice, the provisions of this section are in addition to, and do not otherwise affect, the criteria for expert testimony provided in section 2169.

**History:** Add. 1995, Act 249, Eff. Mar. 28, 1996.

#### **600.2955a Impaired ability to function due to influence of intoxicating liquor or controlled substance as absolute defense; definitions.**

Sec. 2955a. (1) It is an absolute defense in an action for the death of an individual or for injury to a person or property that the individual upon whose death or injury the action is based had an impaired ability to function due to the influence of intoxicating liquor or a controlled substance, and as a result of that impaired ability, the individual was 50% or more the cause of the accident or event that resulted in the death or injury. If the individual described in this subsection was less than 50% the cause of the accident or event, an award of damages shall be reduced by that percentage.

(2) As used in this section:

(a) "Controlled substance" means that term as defined in section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws.

(b) "Impaired ability to function due to the influence of intoxicating liquor or a controlled substance" means that, as a result of an individual drinking, ingesting, smoking, or otherwise consuming intoxicating liquor or a controlled substance, the individual's senses are impaired to the point that the ability to react is diminished from what it would be had the individual not consumed liquor or a controlled substance. An individual is presumed under this section to have an impaired ability to function due to the influence of intoxicating liquor or a controlled substance if, under a standard prescribed by section 625a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.625a of the Michigan Compiled Laws, a presumption would arise that the individual's ability to operate a vehicle was impaired.

**History:** Add. 1995, Act 249, Eff. Mar. 28, 1996.

#### **600.2955b Plaintiff's action for individual's bodily injury or death during commission of felony; dismissal with prejudice; stay of civil action until final disposition; period of limitations; applicability; definitions.**

Sec. 2955b. (1) Except as otherwise provided in this section, the court shall dismiss with prejudice a plaintiff's action for an individual's bodily injury or death and shall order the plaintiff to pay each defendant's costs and actual attorney fees if the bodily injury or death occurred during 1 or more of the following:

(a) The individual's commission, or flight from the commission, of a felony.

(b) The individual's acts or flight from acts that the finder of fact in the civil action finds, by clear and convincing evidence, to constitute all the elements of a felony.

(2) If the bodily injury or death described in subsection (1) resulted from force, the court shall not apply subsection (1) to the claim of the plaintiff against a defendant who caused the individual's bodily injury or death unless the court finds that the particular defendant did either of the following:

(a) Used a degree of force that a reasonable person would believe to have been appropriate to prevent injury to the defendant or to others.

(b) Used a degree of force that a reasonable person would believe to have been appropriate to prevent or respond to the commission of a felony. In making a finding under this subsection, the court shall not consider the fact that the defendant may not have known that the plaintiff's actions or attempted actions would be the commission of a felony.

(3) If a proceeding is pending regarding an individual's commission of a felony and the individual is a plaintiff in a civil action for damages for his or her own bodily injury, the court shall stay the plaintiff's civil action in regard to a claim against a particular defendant until the final disposition of the proceeding on the individual's commission of a felony, including appeals, but only if both of the following occur:

(a) The defendant moves under subsection (1) to dismiss the plaintiff's claim in regard to the defendant.

(b) The court finds probable cause to believe that subsection (1) applies to the plaintiff's claim against the defendant.

(4) The period of limitations to bring a civil action for damages for an individual's bodily injury or death is tolled during each period of time that a court proceeding is pending regarding the individual in a criminal action or an adjudication under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, including appeals, but only if the civil action is based on the same events as the criminal action or adjudication.

(5) At any point in time that section 1902 applies to an individual or events, this section does not apply to the individual or the events.

(6) This section applies only to a civil action filed on or after the effective date of the amendatory act that added this section.

(7) As used in this section:

(a) "Commission of a felony" means either of the following:

(i) A conviction for a felony.

(ii) An adjudication under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, holding an individual responsible for an offense that if committed by an adult would be a felony.

(b) "Felony" means a violation of a law of this state or of the United States that is designated as a felony or that is punishable by death or imprisonment for more than 1 year.

(c) "Plaintiff" includes, but is not limited to, an individual who, or an estate that, brings an action for the bodily injury or death.

**History:** Add. 2000, Act 176, Eff. Sept. 18, 2000.

### **600.2956 Several and joint liability.**

Sec. 2956. Except as provided in section 6304, in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the liability of each defendant for damages is several only and is not joint. However, this section does not abolish an employer's vicarious liability for an act or omission of the employer's employee.

**History:** Add. 1995, Act 161, Eff. Mar. 28, 1996.

### **600.2956a Certificate of employability as evidence of due care.**

Sec. 2956a. (1) In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, a certificate of employability issued to an individual under section 34d of the corrections code of 1953, 1953 PA 232, MCL 791.234d, may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate of employability was issued, if the person knew of the certificate at the time of hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual.

(2) Except as otherwise provided in this subsection, in an action based on tort or another legal theory

seeking damages for personal injury, property damage, or wrongful death, if a claim against an employer requires proof that the employer was negligent in hiring an individual by disregarding a prior criminal conviction, a certificate of employability issued to an individual under section 34d of the corrections code of 1953, 1953 PA 232, MCL 791.234d, conclusively establishes that the employer did not act negligently in hiring the individual, if the employer knew of the certificate at the time of hire.

(3) If an individual who has been issued a certificate of employability under section 34d of the corrections code of 1953, 1953 PA 232, MCL 791.234d, is hired and subsequently demonstrates that he or she is a danger to individuals or property or is convicted of or pleads guilty to a felony, an employer who retains the individual as an employee is not liable in a civil action that requires proof that the employer was negligent in retaining the individual as an employee unless a preponderance of the evidence establishes that the person having hiring and firing responsibility for the employer had actual knowledge that the individual was dangerous or that the individual had been convicted of or pleaded guilty to the subsequent felony, and the person was willful in retaining the individual as an employee.

(4) This section does not relieve an employer from a duty or requirement established in another law concerning a background check or verification that an individual is qualified for a position, and does not relieve the employer of liability arising from failure to comply with any such law.

(5) This section does not create any affirmative duty or otherwise alter an employer's obligation to or regarding an employee with a certificate of employability issued under section 34d of the corrections code of 1953, 1953 PA 232, MCL 791.234d.

**History:** Add. 2014, Act 360, Eff. Jan. 1, 2015.

#### **600.2957 Determination and allocation of fault; action against nonparty; amendment of pleading; assessment of fault against nonparty.**

Sec. 2957. (1) In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the liability of each person shall be allocated under this section by the trier of fact and, subject to section 6304, in direct proportion to the person's percentage of fault. In assessing percentages of fault under this subsection, the trier of fact shall consider the fault of each person, regardless of whether the person is, or could have been, named as a party to the action.

(2) Upon motion of a party within 91 days after identification of a nonparty, the court shall grant leave to the moving party to file and serve an amended pleading alleging 1 or more causes of action against that nonparty. A cause of action added under this subsection is not barred by a period of limitation unless the cause of action would have been barred by a period of limitation at the time of the filing of the original action.

(3) Sections 2956 to 2960 do not eliminate or diminish a defense or immunity that currently exists, except as expressly provided in those sections. Assessments of percentages of fault for nonparties are used only to accurately determine the fault of named parties. If fault is assessed against a nonparty, a finding of fault does not subject the nonparty to liability in that action and shall not be introduced as evidence of liability in another action.

**History:** Add. 1995, Act 161, Eff. Mar. 28, 1996;—Am. 1995, Act 249, Eff. Mar. 28, 1996.

#### **600.2958 Plaintiff's contributory fault not as bar to recovery of damages.**

Sec. 2958. Subject to section 2959, in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, a plaintiff's contributory fault does not bar that plaintiff's recovery of damages.

**History:** Add. 1995, Act 161, Eff. Mar. 28, 1996.

#### **600.2959 Comparative fault; reduced damages.**

Sec. 2959. In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the court shall reduce the damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in section 6306 or 6306a, as applicable. If that person's percentage of fault is greater than the aggregate fault of the other person or persons, whether or not parties to the action, the court shall reduce economic damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in section 6306 or 6306a, as applicable, and noneconomic damages shall not be awarded.

**History:** Add. 1995, Act 161, Eff. Mar. 28, 1996;—Am. 2012, Act 608, Eff. Mar. 28, 2013.

**Compiler's note:** Enacting section 1 of Act 608 of 2012 provides:

"Enacting section 1. Sections 1483, 2959, 6306, and 6307 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1483, 600.2959, 600.6306, and 600.6307, as amended by this amendatory act and section 6306a of the revised judiciary act of 1961, 1961 PA 236, MCL 600.6306a, as added by this amendatory act apply only to actions in which the cause of action arose on or after the effective date of this amendatory act."

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**600.2960 Burden of proof; cause of action.**

Sec. 2960. (1) The person seeking to establish fault under sections 2957 to 2959 has the burden of alleging and proving that fault.

(2) Sections 2957 to 2959 do not create a cause of action.

**History:** Add. 1995, Act 161, Eff. Mar. 28, 1996.

**600.2961 Definitions; determining when commission due; payment of commissions; liability; attorney fees and costs; jurisdiction; contract waiver void; applicability of section.**

Sec. 2961. (1) As used in this section:

(a) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders or sales or as a percentage of the dollar amount of profits.

(b) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(c) "Prevailing party" means a party who wins on all the allegations of the complaint or on all of the responses to the complaint.

(d) "Principal" means a person that does either of the following:

(i) Manufactures, produces, imports, sells, or distributes a product in this state.

(ii) Contracts with a sales representative to solicit orders for or sell a product in this state.

(e) "Sales representative" means a person who contracts with or is employed by a principal for the solicitation of orders or sale of goods and is paid, in whole or in part, by commission. Sales representative does not include a person who places an order or sale for a product on his or her own account for resale by that sales representative.

(2) The terms of the contract between the principal and sales representative shall determine when a commission becomes due.

(3) If the time when the commission is due cannot be determined by a contract between the principal and sales representative, the past practices between the parties shall control or, if there are no past practices, the custom and usage prevalent in this state for the business that is the subject of the relationship between the parties.

(4) All commissions that are due at the time of termination of a contract between a sales representative and principal shall be paid within 45 days after the date of termination. Commissions that become due after the termination date shall be paid within 45 days after the date on which the commission became due.

(5) A principal who fails to comply with this section is liable to the sales representative for both of the following:

(a) Actual damages caused by the failure to pay the commissions when due.

(b) If the principal is found to have intentionally failed to pay the commission when due, an amount equal to 2 times the amount of commissions due but not paid as required by this section or \$100,000.00, whichever is less.

(6) If a sales representative brings a cause of action pursuant to this section, the court shall award to the prevailing party reasonable attorney fees and court costs.

(7) In an action brought under this section, jurisdiction shall be determined in accordance with chapter 7.

(8) A provision in a contract between a principal and a sales representative purporting to waive any right under this section is void.

(9) This section does not affect the rights of a principal or sales representative that are otherwise provided by law.

**History:** Add. 1992, Act 125, Imd. Eff. June 29, 1992.

**600.2962 Malpractice action against certified public accountant.**

Sec. 2962. (1) This section applies to an action for professional malpractice against a certified public accountant. A certified public accountant is liable for civil damages in connection with public accounting services performed by the certified public accountant only in 1 of the following situations:

(a) Subject to subsection (2), a negligent act, omission, decision, or other conduct of the certified public accountant if the claimant is the certified public accountant's client.

(b) An act, omission, decision, or conduct of the certified public accountant that constitutes fraud or an intentional misrepresentation.

(c) Subject to subsection (2), a negligent act, omission, decision, or other conduct of the certified public accountant if the certified public accountant was informed in writing directly by the client before



commencement of the engagement that a primary intent of the client was for the professional public accounting services to benefit or influence the person bringing the action for civil damages. For the purposes of this subdivision, the certified public accountant shall also separately identify in writing directly to the client, before commencement of the engagement, each person, generic group, or class description that the certified public accountant intends to have rely on the services. The certified public accountant may be held liable only to each identified person, generic group, or class description. The certified public accountant's written identification shall include each person, generic group, or class description identified by the client as being benefited or influenced.

(2) A certified public accountant is not liable for civil damages in any of the following situations:

(a) The claimant is not the certified public accountant's client, but asserts standing to sue based on an assignment of the claim from the client to the claimant. This subdivision does not apply to an action arising out of an annual report required by the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, or the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(b) The claimant is not the certified public accountant's client, but asserts standing to sue based on a voluntary surrender of assets or acquisition of the claim by means of foreclosure or surrender under any type of security agreement between the claimant and the client.

(c) The claimant is not the certified public accountant's client, but asserts standing to sue based on a writing referred to in subsection (1)(c) that was not signed by the client himself or herself, if an individual, or that was not signed by an officer, manager, or member of the client, if an entity.

**History:** Add. 1995, Act 249, Eff. Mar. 28, 1996;—Am. 2012, Act 268, Imd. Eff. July 3, 2012.

#### **600.2962[1] Definitions; unauthorized receipt of cable or satellite television service; action to enjoin; damages; actual damages not required; separate causes of action.**

Sec. 2962. (1) As used in this section:

(a) "Cable or satellite system equipment" means any cables, converters, decoders, descramblers, devices, instruments, or other equipment owned by a cable or satellite television provider and used in a cable or satellite television system, including devices leased from the cable or satellite television provider by a subscriber for use in receiving cable or satellite television service.

(b) "Cable or satellite television provider" means a person or persons who provide cable or satellite television service over a cable or satellite television system.

(c) "Cable or satellite television service" means the transmission of video programming over a cable or satellite television system.

(d) "Cable or satellite television system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control cable or satellite system equipment that is designed to provide cable or satellite television service.

(e) "Unauthorized connection" means any physical, electrical, mechanical, acoustical, or other connection to a cable or satellite television system, without the specific authority of the cable or satellite television provider. An unauthorized connection does not include any of the following:

(i) An internal connection made by a person within his or her residence for the purpose of receiving authorized cable or satellite television service.

(ii) The physical connection of a cable or other device by a person located within his or her residence which was initially placed there by the cable or satellite television service provider.

(iii) The physical connection of a cable or other device by a person located within his or her residence which the person had reason to believe was an authorized connection.

(f) "Unauthorized device" means any instrument, apparatus, circuit board, equipment, or device designed or adapted for use to fraudulently avoid the lawful charge for any cable or satellite television service.

(g) "Unauthorized receipt of cable or satellite television service" means the interception or receipt by any means of cable or satellite television service over a cable or satellite television system without the specific authorization of the cable or satellite television provider.

(2) A cable or satellite television provider may bring an action to enjoin a person from the unauthorized receipt of cable or satellite television service, using an unauthorized device, making an unauthorized connection, or committing an act that would be in violation of section 540c of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.540c of the Michigan Compiled Laws, and may seek 1 or more of the following damages:

(a) Actual damages.

(b) Exemplary damages of not more than \$1,000.00 or, if the person's acts were for direct or indirect commercial advantage or financial gain, exemplary damages of not more than \$50,000.00.

(c) Reasonable attorney fees and costs.

(3) It is not a necessary prerequisite to bring an action under this section that the cable or satellite television provider have suffered actual damages.

(4) An action under this section is in addition to any other penalties or remedies provided by law.

(5) Each act prohibited by this section is a separate cause of action.

**History:** Add. 1996, Act 558, Eff. Mar. 31, 1997.

**Compiler's note:** Section 2962, as added by Act 558 of 1996, was compiled as MCL 600.2962[1] to distinguish it from another section 2962, deriving from Act 249 of 1995 and pertaining to malpractice action against certified public accountant.

**600.2962a Definitions; injunction; damages; civil action; court actions; actual damages or convictions not prerequisite to action; additional penalties or remedies; separate causes of action.**

Sec. 2962a. (1) As used in this section:

(a) "Telecommunications service" means that term as defined in section 219a of the Michigan penal code, 1931 PA 328, MCL 750.219a.

(b) "Telecommunications service provider" means that term as defined in section 219a of the Michigan penal code, 1931 PA 328, MCL 750.219a.

(c) "Telecommunications system" means that term as defined in section 219a of the Michigan penal code, 1931 PA 328, MCL 750.219a.

(d) "Unauthorized connection" means any physical, electrical, mechanical, acoustical, or other connection to a telecommunications system, without the specific authority of the telecommunications service provider. An unauthorized connection does not include any of the following:

(i) An internal connection made by a person within his or her residence for the purpose of receiving authorized telecommunications service.

(ii) The physical connection of a cable or other device by a person located within his or her residence which was initially placed there by the telecommunications service provider.

(iii) The physical connection of a cable or other device by a person located within his or her residence which the person had reason to believe was an authorized connection.

(e) "Unauthorized receipt of telecommunications service" means the interception or receipt by any means of a telecommunications service over a telecommunications system without the specific authorization of the telecommunications service provider.

(f) "Unlawful telecommunications access device" means that term as defined in section 219a of the Michigan penal code, 1931 PA 328, MCL 750.219a.

(2) A telecommunications service provider may bring an action to enjoin a person from the unauthorized receipt of any telecommunications service, using an unlawful telecommunications access device, or the making of an unauthorized connection, and may seek 1 or more of the following damages:

(a) Actual damages.

(b) Exemplary damages of not more than \$1,000.00.

(c) If the person's acts were for direct or indirect commercial advantage or financial gain, exemplary damages of not more than \$50,000.00.

(d) Reasonable attorney fees and costs.

(3) A person injured by a violation of sections 219a, 540c, and 540g of the Michigan penal code, 1931 PA 328, MCL 750.219a, 750.540c, and 750.540g, may bring a civil action in any court of competent jurisdiction. The court may do any of the following:

(a) Grant preliminary and final injunctions to prevent or restrain the violations.

(b) At any time while an action is pending, order the impounding, on terms as the court considers reasonable, of any telecommunications access device or unlawful telecommunications access device that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in the alleged violation.

(c) Award damages as provided under subdivision (f).

(d) In its discretion, award reasonable attorney fees and costs, including, but not limited to, costs for investigation, testing, and expert witness fees.

(e) As part of a final judgment or decree finding a violation, order the modification or destruction of any telecommunications access device or unlawful telecommunications access device involved in the violation.

(f) Award damages computed as 1 of the following upon the election of the complaining party at any time before final judgment:

(i) The actual damages suffered by the complaining party as a result of the violation of this section and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages. In determining the violator's profits, the complaining party shall be required to prove only the

violator's gross revenue, and the violator shall be required to prove any deductible expenses and the elements of profit attributable to factors other than the violation.

(ii) Damages of between \$250.00 to \$10,000.00 for each telecommunications access device or unlawful telecommunications access device involved in the action, with the amount of the damages to be determined by the court. Where the court finds that the violation of this section was committed willfully and for commercial advantage or financial gain, the court may increase the award of damages by an amount of not more than \$50,000.00 for each telecommunications access device or unlawful telecommunications access device involved in the action.

(4) It is not a necessary prerequisite to bring an action under this section that the telecommunications service provider or other injured party has suffered actual damages or that the defendant has been convicted of any violations of the Michigan penal code, 1931 PA 328, MCL 750.1 to 750.568.

(5) An action under this section is in addition to any other penalties or remedies provided by law.

(6) Each act prohibited by this section is a separate cause of action.

**History:** Add. 2002, Act 663, Imd. Eff. Dec. 26, 2002.

### **600.2963 Commencement of civil action or filing appeal in civil action by prisoner; payment of filing fees and costs; claim of indigency; failure to pay fees and costs.**

Sec. 2963. (1) If a prisoner under the jurisdiction of the department of corrections submits for filing a civil action as plaintiff in a court of this state or submits for filing an appeal in a civil action in a court of this state and states that he or she is indigent and therefore is unable to pay the filing fee and costs required by law, the prisoner making the claim of indigency shall submit to the court a certified copy of his or her institutional account, showing the current balance in the account and a 12-month history of deposits and withdrawals for the account. The court then shall order the prisoner to pay fees and costs as provided in this section. The court shall suspend the filing of the civil action or appeal until the filing fee or initial partial filing fee ordered under subsection (2) or (3) is received by the court. If the court orders that a prisoner pay a filing fee or partial filing fee, all documents submitted by the prisoner that relate to that action or appeal shall be returned to the prisoner by the court along with 2 certified copies of the court order. An additional certified copy of the court order shall be sent to the department of corrections facility where the prisoner is housed. The prisoner then shall, within 21 days after the date of the court order, resubmit to the court all documents relating to the action or appeal, accompanied by the required filing fee or partial filing fee and 1 certified copy of the court order. If the filing fee or initial partial filing fee is not received within 21 days after the day on which it was ordered, the court shall not file that action or appeal, and shall return to the plaintiff all documents submitted by the plaintiff that relate to that action or appeal.

(2) If, upon commencement of the civil action or the filing of the appeal, the balance in the prisoner's institutional account equals or exceeds the full amount of the filing fee required by law, the court shall order the prisoner to pay that amount.

(3) If, upon commencement of the civil action or the filing of the appeal, the balance in the prisoner's institutional account is less than the full amount of the filing fee required by law, the court shall require the prisoner to pay an initial partial filing fee in an amount equal to 50% of the greater of the following:

(a) The average monthly deposits to the prisoner's institutional account for the 12 months preceding the date on which the civil action is commenced or the appeal is filed.

(b) The average monthly balance in the prisoner's institutional account for the 12 months preceding the date on which the civil action is commenced or the appeal is filed.

(4) In determining the balance in a prisoner's institutional account for purposes of subsection (2) or (3), the court shall disregard amounts in the institutional account that are required by law or by another court order to be paid for any other purposes.

(5) In addition to an initial partial filing fee under subsection (3), the court shall order the prisoner to make monthly payments in an amount equal to 50% of the deposits made to the account. Payments under this subsection shall continue until the full amount of the filing fee is paid. The collection of payments from the account, and their remittal by the department of corrections, shall be conducted as provided in section 68 of 1953 PA 232, MCL 791.268. If costs are assessed against a prisoner, and if the balance of the prisoner's institutional account is not sufficient to pay the full amount of the costs assessed, the court shall order the prisoner to make payments in the same manner required in this section for the payment of filing fees, and the full amount of the costs shall be collected and paid in the manner provided in this subsection and in section 68 of 1953 PA 232, MCL 791.268.

(6) The total amount collected from a prisoner under subsections (3) to (5) shall not exceed the full amount of the filing fee and costs required by law.

(7) For purposes of this section, the fact of a prisoner's incarceration cannot be the sole basis for a

determination of indigency. However, this section shall not prohibit a prisoner from commencing a civil action or filing an appeal in a civil action if the prisoner has no assets and no means by which to pay the initial partial filing fee. If the court, pursuant to court rule, waives or suspends the payment of fees and costs in an action described in subsection (1) because the prisoner has no assets and no means by which to pay the initial partial filing fee, the court shall order the fees and costs to be paid by the prisoner in the manner provided in this section when the reason for the waiver or suspension no longer exists.

(8) A prisoner who has failed to pay outstanding fees and costs as required under this section shall not commence a new civil action or appeal until the outstanding fees and costs have been paid.

(9) If a prisoner is ordered by a court to make monthly payments for the purpose of paying the balance of filing fees or costs under this section, the agency having custody of the prisoner shall remove those amounts from the institutional account of the prisoner subject to the order and, when an amount equal to the balance of the filing fees or costs due is removed, remit that amount as directed in the order.

**History:** Add. 1996, Act 555, Eff. June 1, 1997;—Am. 1999, Act 147, Imd. Eff. Nov. 1, 1999.

#### **600.2964 Social security or credit card number on check as condition of acceptance; requirement prohibited; exceptions; prima facie evidence of identity; violation; penalty; "sale at retail" defined.**

Sec. 2964. (1) Except as provided in subsection (2), a person shall not require that a social security or credit card number be written on a check as a condition of acceptance of that check. As used in this section, "check" includes a draft, warrant, or any other instrument that authorizes the payment of money.

(2) This section does not prohibit any of the following:

(a) A credit granting institution from requiring its own account number to be recorded on a check.

(b) A governmental entity from requiring a person to record his or her social security number on a check made for a payment on a tax liability.

(c) A person that has agreed to accept a check from a credit card holder if the check is guaranteed by the credit card issuer from requiring the credit card number and the expiration date of the card to be recorded on the check.

(3) The following is prima facie evidence of the identity of the drawer of a check:

(a) The following drawer information if obtained from the drawer and recorded on the check:

(i) Name.

(ii) Address.

(iii) Home or work telephone number, if any.

(iv) Driver license number, state identification card number, or military identification card number.

(b) The signature of the drawer if witnessed and initialed by the person receiving the check.

(4) Except as provided in subsection (5), a person who violates this section is responsible for a state civil infraction punishable by a fine of not more than \$500.00.

(5) In a sale at retail, it is the owner of the business that is liable for a violation under this section and is responsible for a state civil infraction punishable by a fine of not more than \$500.00.

(6) As used in this section, "sale at retail" means a transaction by which ownership or leasing of tangible personal property is transferred or leased for consideration, if made in the ordinary course of business.

**History:** Add. 1997, Act 157, Eff. Jan. 1, 1998.

#### **600.2965 Recovery of damages by firefighter or police officer; preclusion abolished.**

Sec. 2965. The common law doctrine that precludes a firefighter or police officer from recovering damages for injuries arising from the normal, inherent, and foreseeable risks of his or her profession is abolished.

**History:** Add. 1998, Act 389, Imd. Eff. Nov. 30, 1998.

**Compiler's note:** Enacting section 1 of Act 389 of 1998 provides:

"Enacting section 1. Sections 2965, 2966, and 2967 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2965, 600.2966, and 600.2967, as added by this amendatory act, do not apply to a cause of action arising before the effective date of this amendatory act."

#### **600.2966 Injury to firefighter or police officer; governmental immunity.**

Sec. 2966. The state, a political subdivision of this state, or a governmental agency, governmental officer or employee, volunteer acting on behalf of a government, and member of a governmentally created board, council, commission, or task force are immune from tort liability for an injury to a firefighter or police officer that arises from the normal, inherent, and foreseeable risks of the firefighter's or police officer's profession. This section shall not be construed to affect an individual's rights to benefits provided under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

**History:** Add. 1998, Act 389, Imd. Eff. Nov. 30, 1998.

**Compiler's note:** Enacting section 1 of Act 389 of 1998 provides:

"Enacting section 1. Sections 2965, 2966, and 2967 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2965, 600.2966, and 600.2967, as added by this amendatory act, do not apply to a cause of action arising before the effective date of this amendatory act."

**600.2967 Recovery of damages by firefighter or police officer; circumstances as proof; construction of section; definitions.**

Sec. 2967. (1) Except as provided in section 2966, a firefighter or police officer who seeks to recover damages for injury or death arising from the normal, inherent, and foreseeable risks of his or her profession while acting in his or her official capacity must prove that 1 or more of the following circumstances are present:

(a) An injury or resulting death that is a basis for the cause of action was caused by a person's conduct and that conduct is 1 or more of the following:

(i) Grossly negligent.

(ii) Wanton.

(iii) Willful.

(iv) Intentional.

(v) Conduct that results in a conviction, guilty plea, or plea of no contest to a crime under state or federal law, or a local criminal ordinance that substantially corresponds to a crime under state law.

(b) The cause of action is a product liability action that is based on firefighting or police officer equipment that failed while it was being used by the firefighter or police officer during the legally required or authorized duties of the profession, which duties were performed during an emergency situation and which duties substantially increased the likelihood of the resulting death or injury, and all of the following are true:

(i) The negligent person is not someone whose act or omission resulted in the firefighter's or police officer's presence at the place where the injury occurred; or the person is someone whose act or omission resulted in the firefighter's or police officer's presence at the place where the injury occurred and the action is based on an act by that person that occurred after the firefighter or police officer arrived at the place where the injury occurred.

(ii) The negligent person is not someone from whom the firefighter or police officer had sought or obtained assistance or is not an owner or tenant of the property from where the firefighter or police officer sought or obtained assistance.

(iii) The negligent person is not someone who is an owner or tenant of the property that the firefighter or police officer was on in his or her official capacity; or the person is someone who is an owner or tenant of the property that the firefighter or police officer was on in his or her official capacity and the action is based on an act by that person that occurred after the firefighter or police officer arrived at the place where the injury occurred.

(c) An injury or resulting death that is a basis for the cause of action was caused by a person's ordinary negligence and all of the following are true:

(i) The negligent person is not someone whose act or omission resulted in the firefighter's or police officer's presence at the place where the injury occurred; or the person is someone whose act or omission resulted in the firefighter's or police officer's presence at the place where the injury occurred and the action is based on an act by that person that occurred after the firefighter or police officer arrived at the place where the injury occurred.

(ii) The negligent person is not someone from whom the firefighter or police officer had sought or obtained assistance or is not an owner or tenant of the property from where the firefighter or police officer sought or obtained assistance.

(iii) The negligent person is not someone who is an owner or tenant of the property that the firefighter or police officer was on in his or her official capacity; or the person is someone who is an owner or tenant of the property that the firefighter or police officer was on in his or her official capacity and the action is based on an act by that person that occurred after the firefighter or police officer arrived at the place where the injury occurred.

(iv) The firefighter or police officer was engaged in 1 or more of the following:

(A) Operating, or riding in or on, a motor vehicle that is being operated in conformity with the laws applicable to the general public.

(B) An act involving the legally required or authorized duties of the profession that did not substantially increase the likelihood of the resulting death or injury. The court shall not consider the firefighter or police officer to have been engaged in an act that substantially increased the likelihood of death or injury if the injury occurred within a highway right-of-way, if there was emergency lighting activated at the scene, and if the firefighter or police officer was engaged in emergency medical services, accessing a fire hydrant, traffic



control, motorist assistance, or a traffic stop for a possible violation of law.

(2) This section shall not be construed to affect a right, remedy, procedure, or limitation of action that is otherwise provided by statute or common law.

(3) As used in this section:

(a) "Grossly negligent" means conduct so reckless as to demonstrate a substantial lack of concern for whether injury results.

(b) "Person" means an individual or a partnership, corporation, limited liability company, association, or other legal entity.

(c) "Product liability action" means that term as defined in section 2945.

**History:** Add. 1998, Act 389, Imd. Eff. Nov. 30, 1998.

**Compiler's note:** Enacting section 1 of Act 389 of 1998 provides:

"Enacting section 1. Sections 2965, 2966, and 2967 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2965, 600.2966, and 600.2967, as added by this amendatory act, do not apply to a cause of action arising before the effective date of this amendatory act."

#### **600.2968 Repealed. 2020, Act 367, Imd. Eff. Jan. 4, 2021.**

**Compiler's note:** The repealed section pertained to liability for improper gifts or services to student athletes.

#### **600.2969 Repealed. 1999, Act 239, Eff. Jan. 1, 2003.**

**Compiler's note:** The repealed section pertained to definitions and damages resulting from computer date failure.

#### **600.2970 Repealed. 1999, Act 240, Eff. Jan. 1, 2003.**

**Compiler's note:** The repealed section pertained to definitions and damages resulting from computer date failure.

#### **600.2971 Wrongful birth or wrongful life claims; prohibitions; exceptions.**

Sec. 2971. (1) A person shall not bring a civil action on a wrongful birth claim that, but for an act or omission of the defendant, a child or children would not or should not have been born.

(2) A person shall not bring a civil action for damages on a wrongful life claim that, but for the negligent act or omission of the defendant, the person bringing the action would not or should not have been born.

(3) A person shall not bring a civil action for damages for daily living, medical, educational, or other expenses necessary to raise a child to the age of majority, on a wrongful pregnancy or wrongful conception claim that, but for an act or omission of the defendant, the child would not or should not have been conceived.

(4) The prohibition stated in subsection (1), (2), or (3) applies regardless of whether the child is born healthy or with a birth defect or other adverse medical condition. The prohibition stated in subsection (1), (2), or (3) does not apply to a civil action for damages for an intentional or grossly negligent act or omission, including, but not limited to, an act or omission that violates the Michigan penal code, 1931 PA 328, MCL 750.1 to 750.568.

**History:** Add. 2000, Act 423, Eff. Mar. 28, 2001.

**Compiler's note:** Enacting section 1 of Act 423 of 2000 provides:

"Enacting section 1. This amendatory applies only to cause of action arising on or after the effective date of amendatory act."

#### **600.2972 Allegation of domestic violence; consideration of motion to seal court records; "domestic violence" defined.**

Sec. 2972. (1) When considering a motion to seal court records in a civil or criminal matter, if the motion involves an allegation of domestic violence, the court shall consider the safety of any alleged victim or potential victim of the domestic violence.

(2) As used in this section, "domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

**History:** Add. 2001, Act 205, Eff. Apr. 1, 2002.

#### **600.2973 Field crop produced for crop research or testing; intentional damage or destruction; damage award; definitions.**

Sec. 2973. (1) A person who intentionally damages or destroys all or part of a field crop belonging to another person produced for crop research or testing purposes is liable in a civil action for damages and costs and fees as further described in subsection (2).

(2) The court shall award damages as well as costs and fees associated with an action brought under subsection (1) to a prevailing plaintiff in the following amounts:

(a) Twice the market value of the field crop damaged or destroyed.

(b) If applicable, the value of the crop research or testing.

(3) As used in this section:

(a) "Costs and fees" means the normal costs incurred in being a party in a civil action after an action has been filed with the court, those provided by law or court rule, and the following:

(i) The reasonable and necessary expenses of expert witnesses as determined by the court.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is determined by the court to have been necessary for the preparation of the party's case.

(iii) Reasonable attorney fees.

(b) "Crop research or testing" means a crop produced in conjunction with or as part of a private research or testing program or facility or a research or testing program funded by a federal, state, or local governmental agency.

(c) "Field crop" means plants that include, but are not limited to, those considered and grown as production crops, ornamentals, vegetables, fruit, turf, horticultural crops, industrial crops, plants grown for the production of pharmaceuticals or similar use, seed production crops, livestock crops, and animal feed crops.

**History:** Add. 2002, Act 209, Imd. Eff. Apr. 29, 2002.

#### **600.2974 Limitation of civil liability for weight gain or obesity; requirements for cause of action; definitions.**

Sec. 2974. (1) Subject to subsection (2), a manufacturer, packer, distributor, carrier, holder, seller, marketer, promoter, or advertiser of a food or an association that includes 1 or more manufacturers, packers, distributors, carriers, holders, sellers, marketers, promoters, or advertisers of a food is not subject to civil liability for personal injury or death arising out of weight gain, obesity, or a health condition associated with weight gain or obesity.

(2) Subsection (1) does not preclude civil liability for personal injury or death based on either of the following:

(a) A material violation of an adulteration or misbranding requirement prescribed by a statute or regulation of this state or the United States that proximately caused the injury or death.

(b) A knowing and willful material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food that proximately caused the injury or death.

(3) In an action for civil liability described in subsection (2), the complaint shall state with particularity all of the following:

(a) The statute, regulation, or other law of this state or the United States that was allegedly violated.

(b) The facts that are alleged to constitute a material violation of the statute, regulation, or law.

(c) The facts alleged to demonstrate that the violation proximately caused actual injury to the plaintiff or individual on whose behalf the plaintiff is bringing the action.

(d) If the plaintiff claims that subsection (2)(b) applies, facts sufficient to support a reasonable inference that the conduct was committed with intent to deceive or injure consumers or with the actual knowledge that the conduct was injurious to consumers.

(4) In an action for civil liability described in subsection (2), all discovery and other proceedings shall be stayed while a motion to dismiss is pending unless the court finds on motion of a party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. While discovery is stayed under this subsection, unless otherwise ordered by the court upon a motion from the plaintiff, a party to the action with actual notice of the allegations in the complaint shall tender to the court in camera all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of the party and that are relevant to the allegations or that may lead to the discovery of relevant facts.

(5) A political subdivision of this state shall not file, prosecute, or join, on its own behalf or on behalf of its citizens or another class of persons, a civil action described in this section for damages or other remedy against a person.

(6) This section applies to all actions pending on and all actions filed after the effective date of the amendatory act that added this section, regardless of when the claim accrued.

(7) As used in this section:

(a) "Food" means that term as defined in 21 USC 321.

(b) "Knowing and willful" means, with respect to a violation of federal or state law, that both of the following apply to the conduct constituting the violation:

(i) The conduct was committed with the intent to deceive or injure consumers or with actual knowledge that the conduct was injurious to consumers.

(ii) The conduct was not required by a regulation, order, rule, or other pronouncement of, or a statute administered by, a federal, state, or local government agency.

(c) "Person" means an individual, partnership, corporation, association, or other legal entity.

(d) "Political subdivision" means a county, city, township, or village.

**History:** Add. 2004, Act 367, Imd. Eff. Oct. 7, 2004.

**600.2975 Publishing instructions for manufacture or creation of methamphetamine; commencement of action; court order; relief; exception; definitions.**

Sec. 2975. (1) The attorney general may commence an action against a person who develops or maintains a website or page on a website for the purpose of publishing instructions for the manufacture or creation of methamphetamine or information on how to obtain substances that may be used in the manufacture or creation of methamphetamine.

(2) The court in an action brought under subsection (1) may order 1 or more of the following forms of relief:

- (a) Injunctive or other equitable relief, as appropriate.
- (b) Actual damages sustained by this state or the residents of this state that are caused by the publication.
- (c) Punitive damages that the court determines are just and equitable.
- (d) Actual attorney fees and costs.

(3) This section does not apply if the published information is only on how to obtain substances that may be lawfully possessed in this state and the purpose of the website is to provide information on obtaining the substances only for lawful purposes and in a lawful manner.

(4) As used in this section:

(a) "Internet" means that term as defined in 47 USC 230.

(b) "Methamphetamine" means the substance described in section 7214(c)(ii) of the public health code, 1978 PA 368, MCL 333.7214.

(c) "Website" means a collection of pages of the world wide web or internet, usually in HTML format.

**History:** Add. 2006, Act 257, Eff. Oct. 1, 2006.

**600.2975a Entry of judgment for damages; notice to department.**

Sec. 2975a. Upon entry of a judgment for damages against a licensee under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, on the basis of a violation of section 2411(2) of the occupational code, 1980 PA 299, MCL 339.2411, the court shall notify the bureau of commercial services of the department of labor and economic growth of the entry of that judgment and shall convey to the department a copy of that judgment.

**History:** Add. 2007, Act 156, Eff. June 1, 2008.

**600.2976 Seller or end user who stores, secures, uses, transports, or protects anhydrous ammonia; immunity from tort liability; applicability; definitions.**

Sec. 2976. (1) A seller or end user who stores, secures, uses, transports, or protects anhydrous ammonia in compliance with AASSPs is immune from tort liability for injury to a person, damage to property, or death that results from the larceny or attempted larceny of anhydrous ammonia, or from a person obtaining or using, or attempting to obtain or use, anhydrous ammonia in a manner contrary to law. The immunity from tort liability under this subsection includes immunity from liability for an injury to, damage to the property of, or the death of a person who is not the person committing or attempting to commit a larceny of, or obtaining, using, or attempting to obtain or use, anhydrous ammonia in a manner contrary to law.

(2) Failure of a seller or end user to store, secure, use, transport, or protect anhydrous ammonia in compliance with AASSPs does not, by itself, create tort liability for injury to person, damage to property, or death caused by the storing, securing, using, transporting, or protecting of anhydrous ammonia.

(3) This section applies to a cause of action that accrues after the effective date of the amendatory act that added this section and after AASSPs are established under section 5 of the anhydrous ammonia security act.

(4) As used in this section, "AASSPs", "anhydrous ammonia", "end user", and "seller" mean those terms as defined in section 3 of the anhydrous ammonia security act.

**History:** Add. 2006, Act 418, Imd. Eff. Sept. 29, 2006.

**600.2977 Liquefied petroleum gas business; protection from liability; exception; definitions.**

Sec. 2977. (1) A liquefied petroleum gas business is not liable for damages for personal injury, death, or property damage arising from the sale, supplying, handling, transportation, or delivery of liquefied petroleum gas if both of the following apply:

(a) The sale, supplying, handling, transportation, or delivery of the liquefied petroleum gas was either of the following:

(i) In compliance with all of the following:

- (A) Rules promulgated under section 3c of the fire prevention code, 1941 PA 207, MCL 29.3c.
- (B) Section 2 of 1959 PA 241, MCL 429.112.
- (C) Rules promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.
- (ii) Not in compliance with the statute and rules identified in subparagraph (i), but the failure to comply was not a proximate cause of the personal injury, death, or property damage.
- (b) The personal injury, death, or property damage was caused by either of the following:
  - (i) The alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance, unless the alteration, modification, or repair was with the knowledge or consent of the liquefied petroleum gas business.
  - (ii) The use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance in a manner or for a purpose other than the manner in which or purpose for which the equipment or appliance was intended to be used, unless the use could reasonably have been expected by the liquefied petroleum gas business.
- (2) The protection from liability provided by subsection (1) does not apply to a manufacturer of liquefied petroleum gas equipment.
- (3) As used in this section:
  - (a) "Liquefied petroleum gas business" means a person who is engaged primarily in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas.
  - (b) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

**History:** Add. 2013, Act 19, Eff. July 1, 2013.

#### **600.2978 Court action by victim of female genital mutilation; remedies; definitions.**

- Sec. 2978. (1) An individual who is a victim of female genital mutilation may bring an action, in a court of competent jurisdiction, for damages sustained because of the female genital mutilation.
- (2) In an action under this section, the court may award all of the following:
    - (a) Three times the amount of actual damages sustained.
    - (b) Damages for noneconomic loss.
    - (c) Costs and reasonable attorney fees.
  - (3) The remedy provided by this section is in addition to any other right or remedy the individual may have at law or otherwise.
  - (4) As used in this section:
    - (a) "Female genital mutilation" means that term as defined in section 5851a.
    - (b) "Noneconomic loss" means damages or loss due to pain, suffering, inconvenience, physical impairment, or physical disfigurement, loss of society and companionship, loss of consortium, or other noneconomic loss.

**History:** Add. 2017, Act 78, Eff. Oct. 9, 2017.

#### **600.2979 Action for trespass, unjust enrichment, or other action; Michigan electric cooperative easement; rebuttable presumption; liability; damages; definitions.**

- Sec. 2979. (1) In a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative, there is a rebuttable presumption that there is no unreasonable or material increase in the burden on the property subjected to the easement if the Michigan electric cooperative can show 1 of the following:
- (a) That the new or additional facility was installed above the electric space, as provided in the National Electrical Safety Code in effect on the date of installation.
  - (b) That the new facility replaced a previously existing facility in the same or substantially similar location on the pole or poles.
  - (c) That the new or additional facility was installed within the electric space or within the communications space, as provided in the National Electrical Safety Code in effect on the date of the installation.
  - (d) That the new or additional facility was placed underground along the same or substantially similar location of existing underground electric facilities.
- (2) In a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative, the Michigan electric cooperative is not liable unless the plaintiff establishes that 1 of the following applies to the new or additional facility installed on an existing easement:
- (a) The facility was installed outside the geographic bounds of the express or prescriptive easement granted or obtained.

(b) The facility's purpose and use are expressly and specifically prohibited by the terms of the easement.

(c) The facility unreasonably or materially increases the burden on the land.

(3) In a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative, evidence of revenue realized by the Michigan electric cooperative from services using the new or additional facility is inadmissible for purposes of proving damages. Any damages in a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative must be determined by actual diminution of value of the property subject to the easement and directly related to the installation of the additional facility. However, damages awarded must not exceed \$3.00 per linear foot.

(4) As used in this section:

(a) "Facility" means new or expanded broadband fiber infrastructure used, at least partially, for electric service purposes.

(b) "Michigan electric cooperative" includes entities engaged in the transmission or distribution of electric service and that are either of the following:

(i) An electric cooperative headquartered in this state organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, serving primarily members of the cooperative electric utility.

(ii) Another cooperative corporation headquartered in this state.

**History:** Add. 2020, Act 60, Imd. Eff. Mar. 10, 2020.