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## BILL ANALYSIS



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House Bill 4508 (Substitute H-6)  
Sponsor: Representative Michael Nye  
House Committee: Judiciary and Civil Rights  
Senate Committee: Judiciary

Date Completed: 5-23-95

**SUMMARY OF HOUSE BILL 4508 (Substitute H-6) as passed by the House:**

The bill would amend the Revised Judicature Act (RJA) to do the following in regard to actions based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death:

- Eliminate joint liability and the reallocation of uncollectible amounts, except in medical malpractice actions.
- Require the trier of fact to consider the fault of nonparties, as well as parties, in determining the percentage of total fault in an action involving fault of more than one person.
- Provide that noneconomic damages could not be awarded to a party whose percentage of fault exceeded the aggregate fault of the other persons, and the party's economic damages would have to be reduced.
- Require the trier of fact to allocate the liability of each person in direct proportion to the person's percentage of fault, regardless of whether the person was or could have been named as a party to the action.
- Revise provisions governing venue (the particular county in which an action may be commenced and tried).

The bill would take effect September 1, 1995, and apply to cases filed on or after that date.

**Percentage of Fault/Uncollectible Amounts**

The RJA currently specifies that in a personal injury action involving fault of more than one party to the action, including third-party defendants, the court generally has to instruct the jury to answer special interrogatories or, if there is no jury, make findings indicating the total amount of each plaintiff's damages, and the percentage of the total fault of all of the parties regarding each claim as to each plaintiff, defendant, and third-party defendant. In determining the percentages of fault, the trier of fact (the jury or, if none, the court) must consider both the nature of the conduct of each party at fault, and the extent of the causal relation between the conduct and the damages claimed. (Under the Michigan Court Rules, a third-party defendant is someone who is or may be liable to the defendant for all or part of the plaintiff's claim, and is served with a summons and complaint by a defending party.)

The bill provides, instead, that in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death involving fault of more than one person, including third-party defendants and nonparties, the court would have to instruct the jury to answer special interrogatories, or the court would have to make findings, indicating the total amount of each plaintiff's damages, and the percentage of the total fault of all of the parties and nonparties regarding each claim (as described below). In determining the percentages of fault, the trier of fact would have to consider both the nature of the conduct of each party and nonparty at fault, including intentional conduct, and the extent of the causal relation between the conduct and the damages claimed.

The RJA also requires the court to determine the award of damages to each claimant in accordance with the findings required above, subject to any reduction under Section 2925d or 6303, and enter judgment against each party. The court may not enter judgment against a person who has been released from liability under Section 2925d. Except for uncollectible amounts that are reallocated, a person may not be required to pay damages in an amount greater than his or her percentage of fault. (Under Section 2925d, when a release or a covenant not to sue is given to someone liable in tort, it discharges that tort-feasor from liability for contribution to any other tort-feasor. Section 6303 requires the court in a personal injury action to reduce a judgment by the amount of the plaintiff's expense or loss that has been paid by a collateral source, e.g., insurance benefits.) The bill would retain these provisions but delete reference to a reduction under Section 2925d.

The Act also requires the court to determine whether any part of a party's share of an obligation is uncollectible from that party and reallocate any uncollectible amount among the other parties according to their respective percentages of fault. Under the bill, uncollectible amounts could be reallocated only in medical malpractice actions. Specifically, in an action alleging medical malpractice, one of the following would apply:

- If the plaintiff were determined not to have a percentage of fault, the liability of defendants who were persons or entities described in Section 5838a(1) would be joint and several. (That section refers to actions against a licensed health care professional, a licensed health facility or agency, or an employee or agent of a licensed health facility or agency who is engaging in or otherwise assisting in medical care and treatment.)
- If the plaintiff were determined to have a percentage of fault, the court, in regard only to persons or entities described in Section 5838a(1), would have to determine and reallocate uncollectible amounts, as provided in current law.

The bill would delete a provision under which a governmental agency, other than a governmental hospital or medical care facility, is not required to pay a percentage of an uncollectible amount that exceeds the governmental agency's percentage of fault.

#### Release/Covenant not to Sue

Currently, under Section 2925d, if a release or covenant not to sue or not to enforce judgment is given to one of two or more persons liable in tort for the same injury or the same wrongful death, the following apply:

- The release or covenant does not discharge any of the other tort-feasors from liability for the injury or wrongful death unless its terms so provide.

- The release or covenant reduces the claim against the other tort-feasors to the extent of any amount stipulated by the release or the covenant or to the extent of the amount of the consideration paid for it, whichever is greater.
- The release or covenant discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.

The bill would delete the provision that a release or covenant reduces the claim against the other tort-feasors to the extent of any amount stipulated or to the extent of the amount of consideration paid for it. The bill also would replace references to "tort-feasor" with references to "person".

### Allocation of Liability

The bill specifies that, except as provided in Section 6304 (concerning medical malpractice actions), 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 would be several only and would not be joint. This provision, however, would not abolish an employer's vicarious liability for an act or omission of the employer's employee.

The liability of each person would have to be allocated 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, the trier of fact would have to consider the fault of each person, regardless of whether the person was, or could have been, named as a party to the action. The trier of fact could not assess fault to a nonparty, however, unless a party gave notice, within 182 days after the defendant's answer was filed, that the nonparty was wholly or partially at fault. The notice would have to designate the nonparty and set forth the nonparty's name and last known address, or the best identification that was possible, together with a brief statement of the basis for believing that the nonparty was at fault.

Upon motion of a party within 91 days after a notice identifying an at-fault nonparty was filed and served, the court would have to grant leave to the moving party to file and serve an amended pleading alleging one or more causes of action against that nonparty. A cause of action added under this provision would not be barred by a period of limitation unless a period of limitation would have barred the cause of action at the time the original action was filed.

Subject to the following provision, a plaintiff's contributory fault would not bar that party's recovery of damages. In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the court would have to reduce the damages by the percentage of comparative fault of the person upon whose injury or death the damages were based as provided in Section 6306. (That section specifies that if the plaintiff was assigned a percentage of fault, the total judgment amount must be reduced by an amount equal to the percentage of the plaintiff's fault.) If that person's percentage of fault were greater than the aggregate fault of the other person or persons, whether or not they were parties to the action, the court would have to reduce economic damages by the percentage of comparative fault of the person who was injured or killed as provided in Section 6306, and noneconomic damages could not be awarded.

The bill specifies that the preceding provisions would not eliminate or diminish a currently existing defense or immunity, except as expressly provided in the bill. Assessments of percentages of fault for nonparties would be used only to determine accurately the fault of named parties. If fault were assessed against a nonparty, a finding of fault would not subject the nonparty to liability in that action and could not be introduced as evidence of liability in another action.

The bill also states that the preceding provisions would not create a cause of action. A person seeking to establish fault under these provisions would have the burden of alleging and proving that fault.

### Venue

Under Section 1629 of the RJA, a tort action may be tried in the county in which “all or part of the cause of action arose” and in which either the defendant resides, has a place of business, or conducts business, or the registered office of a defendant corporation is located. If no county satisfies those criteria, a tort action may be tried in the county in which all or part of the cause of action arose and in which either the plaintiff resides, has a place of business, or conducts business, or the registered office of a plaintiff corporation is located. The RJA further specifies the proper county if those criteria are not met.

The bill would apply these provisions to an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death. The bill also would refer to the county in which “the original action occurred”, rather than the county in which “all or part of the cause of action arose”.

The RJA specifies that either party may file a motion for a change of venue based on hardship or inconvenience. The bill would delete a requirement that a change of venue under this provision be limited to the county in which the moving party resides.

The bill also provides that, for the purpose of Section 1629, a defendant in a product liability action “is considered to conduct business in a county in which the defendant’s product is sold at retail”.

In addition, the bill would require that venue be determined under Section 1629 if more than one cause of action were pleaded in the initial complaint or added by amendment at any time during the action and one of the causes of action were based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death.

MCL 600.1621 et al.

Legislative Analyst: S. Margules

### **FISCAL IMPACT**

Provisions in the bill concerning the allocation of fault among multiple persons at fault would have an indeterminate impact on State and local units of government. The amount depends on the number of lawsuits in which a unit of government is one of multiple defendants. Highway negligence cases account for the majority of tort payments by the State. Annual payments have averaged \$15.7 million. The majority of cases against the Michigan Department of Transportation result from accidents in which more than one vehicle was involved.

Fiscal Analyst: B. Bowerman

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