



HOUSE BILL No. 4508

March 2, 1995, Introduced by Reps. Nye, Dalman, Fitzgerald, Bush, Lowe, Ryan, Law, Jersevic and Galloway and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 1621, 1627, 1629, 1641, 2925d, 2945, 2948, 6304, and 6306 of Act No. 236 of the Public Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

sections 1621 and 1627 as amended and sections 1629 and 6306 as added by Act No. 178 of the Public Acts of 1986 and section 6304 as amended by Act No. 78 of the Public Acts of 1993, being sections 600.1621, 600.1627, 600.1629, 600.1641, 600.2925d, 600.2945, 600.2948, 600.6304, and 600.6306 of the Michigan Compiled Laws; to add sections 2956, 2957, 2958, 2959, and 2960; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1621, 1627, 1629, 1641, 2925d, 2945,
2 2948, 6304, and 6306 of Act No. 236 of the Public Acts of 1961,
3 sections 1621 and 1627 as amended and sections 1629 and 6306 as

1 added by Act No. 178 of the Public Acts of 1986 and section 6304
 2 as amended by Act No. 78 of the Public Acts of 1993, being sec-
 3 tions 600.1621, 600.1627, 600.1629, 600.1641, 600.2925d,
 4 600.2945, 600.2948, 600.6304, and 600.6306 of the Michigan
 5 Compiled Laws, are amended and sections 2956, 2957, 2958, 2959,
 6 and 2960 are added to read as follows:

7 Sec. 1621. Except for actions provided for in sections
 8 1605, 1611, 1615, and ~~1629(a), (b), and (c)~~ 1629, venue ~~shall~~
 9 ~~be~~ IS determined as follows:

10 (a) The county in which a defendant resides, ~~or~~ has a
 11 place of business, or conducts business, or in which the regis-
 12 tered office of a defendant corporation is located, is a proper
 13 county in which to commence and try an action.

14 (b) If none of the defendants ~~meets any~~ 1 OR MORE of the
 15 criteria in subdivision (a), the county in which ~~any~~ A plain-
 16 tiff resides ~~—~~ or has a place of business, or in which the reg-
 17 istered office of a plaintiff corporation is located, is a proper
 18 county in which to commence and try an action.

19 (c) An action against a fiduciary appointed by court order
 20 shall be commenced in the county in which the fiduciary was
 21 appointed.

22 Sec. 1627. Except for actions founded on contract and
 23 actions provided for in sections 1605, 1611, 1615, and ~~1629(a),~~
 24 ~~(b), and (c)~~ 1629, the county in which all or a part of the
 25 cause of action arose is a proper county in which to commence and
 26 try the action. Suits against the surety of a public officer or

1 his or her appointees ~~shall~~ ARE not ~~be~~ excepted from the
2 application of this section.

3 Sec. 1629. (1) Subject to subsection (2), in an action
4 based on tort OR ANOTHER LEGAL THEORY SEEKING DAMAGES FOR PER-
5 SONAL INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH, ALL OF the fol-
6 lowing ~~provisions~~ apply:

7 (a) ~~A~~ THE county in which ~~all or a part of the cause of~~
8 ~~action arose~~ THE ORIGINAL INJURY OCCURRED and in which either of
9 the following ~~apply~~ APPLIES is a proper county in which to com-
10 mence and try the action:

11 (i) The defendant resides, has a place of business, or con-
12 ducts business in that county.

13 (ii) The registered office of a defendant corporation is
14 located in that county.

15 (b) If no county satisfies the criteria under subdivision
16 (a), ~~a~~ THE county in which ~~all or part of the cause of action~~
17 ~~arose~~ THE ORIGINAL INJURY OCCURRED and in which either of the
18 following ~~apply~~ APPLIES is a proper county in which to commence
19 and try the action:

20 (i) The plaintiff resides, has a place of business, or con-
21 ducts business in that county.

22 (ii) The registered office of a plaintiff corporation is
23 located in that county.

24 (c) If no county satisfies the criteria under subdivision
25 (a) or (b), a county in which both of the following apply is a
26 proper county in which to commence and try the action:

1 (i) The plaintiff resides, has a place of business, or
2 conducts business in that county, or the registered office of a
3 plaintiff corporation is located in that county.

4 (ii) The defendant resides, has a place of business, or con-
5 ducts business in that county, or the registered office of a
6 defendant corporation is located in that county.

7 (d) If no county satisfies the criteria under subdivision
8 (a), (b), or (c), a county ~~which~~ THAT satisfies the criteria
9 under section 1621 or 1627 is a proper county in which to com-
10 mence and try an action.

11 (2) Either party may file a motion for a change in venue
12 based on hardship or inconvenience. ~~Venue shall only be changed~~
13 ~~under this subsection to the county in which the moving party~~
14 ~~resides. If the court determines pursuant to section 1653 that~~
15 ~~the motion is frivolous, the court shall assess costs against the~~
16 ~~moving party.~~

17 (3) FOR THE PURPOSE OF THIS SECTION, IN A PRODUCT LIABILITY
18 ACTION, A DEFENDANT IS CONSIDERED TO CONDUCT BUSINESS IN A COUNTY
19 IN WHICH THE DEFENDANT OR AN AUTHORIZED DEALER OF THE DEFENDANT
20 SELLS THE DEFENDANT'S PRODUCT.

21 Sec. 1641. (1) ~~where~~ EXCEPT AS PROVIDED IN SUBSECTION
22 (2), IF causes of action are joined, whether properly or not, the
23 venue may be laid in any county in which either cause of action,
24 if sued upon separately, could have been commenced and tried,
25 subject to separation and change pursuant to and subject to the
26 conditions imposed by court rules.

1 (2) IF MORE THAN 1 CAUSE OF ACTION IS PLEADED IN THE INITIAL
2 COMPLAINT OR ADDED BY AMENDMENT AT ANY TIME DURING THE ACTION AND
3 1 OF THE CAUSES OF ACTION IS BASED ON TORT OR ANOTHER LEGAL
4 THEORY SEEKING DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, OR
5 WRONGFUL DEATH, VENUE SHALL BE DETERMINED UNDER SECTION 1629.

6 Sec. 2925d. ~~When~~ IF a release or a covenant not to sue or
7 not to enforce judgment is given in good faith to 1 of 2 or more
8 persons ~~liable in tort~~ for the same injury or the same wrongful
9 death, BOTH OF THE FOLLOWING APPLY:

10 (a) ~~It~~ THE RELEASE OR COVENANT does not discharge ~~any~~ 1
11 OR MORE of the other ~~tort feasons~~ PERSONS from liability for
12 the injury or wrongful death unless its terms so provide.

13 ~~(b) It reduces the claim against the other tort feasons to~~
14 ~~the extent of any amount stipulated by the release or the cove-~~
15 ~~nant or to the extent of the amount of the consideration paid for~~
16 ~~it, whichever amount is the greater.~~

17 (B) ~~(c) It~~ THE RELEASE OR COVENANT discharges the
18 ~~tort feason~~ PERSON to whom it is given from all liability for
19 contribution to any other ~~tort feason~~ PERSON FOR THE INJURY OR
20 WRONGFUL DEATH.

21 Sec. 2945. As used in sections 2946 to ~~2949~~ 2948 and
22 section 5805, ~~"products"~~ "PRODUCT liability action" means an
23 action based on ~~any~~ A legal or equitable theory of liability
24 brought for or on account of death or injury to person or DAMAGE
25 TO property caused by or resulting from the manufacture, con-
26 struction, design, formula, development of standards,
27 preparation, processing, assembly, inspection, testing, listing,

1 certifying, warning, instructing, marketing, advertising,
2 packaging, or labeling of a product or a component of a product.

3 Sec. 2948. ~~It shall be~~ EVIDENCE IS admissible ~~as~~
4 ~~evidence~~ in a ~~products~~ PRODUCT liability action that, before
5 the event of death or injury to person or DAMAGE TO property,
6 pamphlets, booklets, labels, or other written warnings were pro-
7 vided ~~which~~ THAT gave notice to foreseeable users of the mate-
8 rial risk of injury, death, or damage connected with the foresee-
9 able use of the product or provided instructions as to the fore-
10 seeable uses, applications, or limitations of the product ~~which~~
11 THAT the defendant knew or should have known.

12 SEC. 2956. IN AN ACTION BASED ON TORT OR ANOTHER LEGAL
13 THEORY SEEKING DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, OR
14 WRONGFUL DEATH, THE LIABILITY OF EACH DEFENDANT FOR DAMAGES IS
15 SEVERAL ONLY AND IS NOT JOINT. HOWEVER, IF DAMAGES ARE AWARDED IN
16 AN ACTION FOR MEDICAL MALPRACTICE AGAINST A PERSON OR ENTITY
17 DESCRIBED IN SECTION 5838A(1), THE PERSON OR ENTITY IS LIABLE FOR
18 A PORTION OF AN UNCOLLECTIBLE AMOUNT AS PROVIDED IN SECTION 6304.

19 SEC. 2957. (1) IN AN ACTION BASED ON TORT OR ANOTHER LEGAL
20 THEORY SEEKING DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, OR
21 WRONGFUL DEATH, THE LIABILITY OF EACH PERSON SHALL BE ALLOCATED
22 UNDER THIS SECTION BY THE TRIER OF FACT AND SUBJECT TO SECTION
23 6304 IN DIRECT PROPORTION TO THE PERSON'S PERCENTAGE OF FAULT.

24 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IN
25 ASSESSING PERCENTAGES OF FAULT AS PROVIDED IN SUBSECTION (1), THE
26 TRIER OF FACT SHALL CONSIDER THE FAULT OF EACH PERSON, REGARDLESS
27 OF WHETHER THE PERSON IS, OR COULD HAVE BEEN, NAMED AS A PARTY TO

1 THE SUIT. HOWEVER, THE TRIER OF FACT SHALL NOT CONSIDER THE
2 FAULT OF A NONPARTY UNLESS A PARTY GIVES NOTICE WITHIN 182 DAYS
3 AFTER THE FILING OF THE DEFENDANT'S ANSWER THAT A NONPARTY IS
4 WHOLLY OR PARTIALLY AT FAULT. THE NOTICE SHALL DESIGNATE THE
5 NONPARTY AND SET FORTH THE NONPARTY'S NAME AND LAST KNOWN
6 ADDRESS, OR THE BEST IDENTIFICATION OF THE NONPARTY THAT IS POS-
7 SIBLE, TOGETHER WITH A BRIEF STATEMENT OF THE BASIS FOR BELIEVING
8 THE NONPARTY TO BE AT FAULT.

9 (3) SECTIONS 2955 TO 2960 DO NOT ELIMINATE OR DIMINISH A
10 DEFENSE OR IMMUNITY THAT CURRENTLY EXISTS, EXCEPT AS EXPRESSLY
11 PROVIDED IN THOSE SECTIONS. ASSESSMENTS OF PERCENTAGES OF FAULT
12 FOR NONPARTIES ARE USED ONLY TO ACCURATELY DETERMINE THE FAULT OF
13 NAMED PARTIES. IF FAULT IS ASSESSED AGAINST A NONPARTY, A FIND-
14 ING OF FAULT DOES NOT SUBJECT THE NONPARTY TO LIABILITY IN THAT
15 ACTION AND SHALL NOT BE INTRODUCED AS EVIDENCE OF LIABILITY IN
16 ANOTHER ACTION.

17 SEC. 2958. IN AN ACTION BASED ON TORT OR ANOTHER LEGAL
18 THEORY SEEKING DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, OR
19 WRONGFUL DEATH, A PLAINTIFF'S CONTRIBUTORY FAULT DOES NOT BAR
20 THAT PLAINTIFF'S RECOVERY OF DAMAGES.

21 SEC. 2959. IN AN ACTION BASED ON TORT OR ANOTHER LEGAL
22 THEORY SEEKING DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, OR
23 WRONGFUL DEATH, THE COURT SHALL REDUCE THE DAMAGES BY THE PERCENT-
24 TAGE OF COMPARATIVE FAULT OF THE PERSON UPON WHOSE INJURY OR
25 DEATH THE DAMAGES ARE BASED AS PROVIDED IN SECTION 6306. IF THAT
26 PERSON'S PERCENTAGE OF FAULT IS EQUAL TO OR GREATER THAN THE
27 AGGREGATE FAULT OF THE OTHER PERSON OR PERSONS, WHETHER OR NOT

1 PARTIES TO THE ACTION, THE COURT SHALL REDUCE ECONOMIC DAMAGES BY
2 THE PERCENTAGE OF COMPARATIVE FAULT OF THE PERSON UPON WHOSE
3 INJURY OR DEATH THE DAMAGES ARE BASED, AND NONECONOMIC DAMAGES
4 SHALL NOT BE AWARDED.

5 SEC. 2960. (1) THE PERSON SEEKING TO ESTABLISH FAULT UNDER
6 SECTIONS 2957 TO 2959 HAS THE BURDEN OF ALLEGING AND PROVING THAT
7 FAULT.

8 (2) SECTIONS 2957 TO 2959 DO NOT CREATE A CAUSE OF ACTION
9 AND DO NOT ALTER THE IMMUNITY OF ANY PERSON.

10 Sec. 6304. (1) In a personal injury action involving fault
11 of more than 1 ~~party to the action~~ PERSON, including
12 third-party defendants AND NONPARTIES, the court, unless other-
13 wise agreed by all parties to the action, shall instruct the jury
14 to answer special interrogatories or, if there is no jury, shall
15 make findings indicating both of the following:

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

17 (b) The percentage of the total fault of all of the parties
18 AND NONPARTIES regarding each claim as ~~to each plaintiff,~~
19 ~~defendant, and third party defendant~~ PROVIDED IN SECTIONS 2956
20 TO 2960.

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

25 ~~(3) If it is determined under subsections (1) and (2) that~~
26 ~~a plaintiff is not at fault, subsections (5) and (6) do not~~
27 ~~apply.~~

1 ~~(4) Subsections (5) and (6) do not apply to a products~~
2 ~~liability action, as defined in section 2945.~~

3 (3) ~~(5)~~ The court shall determine the award of damages to
4 each plaintiff in accordance with the findings under subsection
5 (1), subject to any reduction under subsection ~~(6)~~ (4) or sec-
6 tion ~~2925d or~~ 6303, and enter judgment against each party,
7 including a third-party defendant, except that judgment shall not
8 be entered against a person who has been released from liability
9 pursuant to section 2925d. Except as otherwise provided in sub-
10 section ~~(7)~~ (5), a person shall not be required to pay damages
11 in an amount greater than his or her percentage of fault.

12 (4) ~~(6)~~ In an action alleging medical malpractice, the
13 court shall reduce an award of damages in excess of 1 of the lim-
14 itations set forth in section 1483 to the amount of the appropri-
15 ate limitation set forth in section 1483. The jury shall not be
16 advised by the court or by counsel for either party of the limi-
17 tations set forth in section 1483 or any other provision of sec-
18 tion 1483.

19 (5) ~~(7)~~ THIS SUBSECTION APPLIES ONLY TO AN ACTION ALLEGING
20 MEDICAL MALPRACTICE AND ONLY TO A PERSON OR ENTITY DESCRIBED IN
21 SECTION 5838A(1). Except as otherwise provided in this
22 subsection, ~~and subsection (8),~~ upon motion made not later than
23 6 months after a final judgment is entered, the court shall
24 determine whether all or part of a party's share of the obliga-
25 tion is uncollectible from that party, and shall reallocate any
26 uncollectible amount among the other parties according to their
27 respective percentages of fault as determined under subsection

1 (1). A party ~~shall~~ IS not be required to pay a percentage of
2 any uncollectible amount that exceeds that party's percentage of
3 fault as determined under subsection (1). The party whose
4 liability is reallocated continues to be subject to contribution
5 and to any continuing liability to the plaintiff on the
6 judgment.

7 ~~(8) Notwithstanding subsection (3), a governmental agency,~~
8 ~~other than a governmental hospital or medical care facility, is~~
9 ~~not required to pay a percentage of any uncollectible amount that~~
10 ~~exceeds the governmental agency's percentage of fault as deter-~~
11 ~~mined under subsection (1).~~

12 Sec. 6306. (1) After a verdict rendered by a trier of fact
13 in favor of a plaintiff, an order of judgment shall be entered by
14 the court. ~~The~~ SUBJECT TO SECTION 2959, THE order of judgment
15 shall be entered against each defendant, including a third-party
16 defendant, in the following order and in the following judgment
17 amounts:

18 (a) All past economic damages, less collateral source pay-
19 ments as provided for in section 6303.

20 (b) All past noneconomic damages.

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

25 (d) All future medical and other health care costs reduced
26 to gross present cash value.

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

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

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

10 ~~(3) If there is an individual who was released from liabil-~~
11 ~~ity pursuant to section 2925d, the total judgment amount shall be~~
12 ~~reduced, as provided in subsection (5), by an amount equal to the~~
13 ~~amount of the settlement between the plaintiff and that~~
14 ~~individual.~~

15 (3) ~~(4)~~ If the plaintiff was assigned a percentage of
16 fault ~~pursuant to~~ UNDER section 6304, the total judgment amount
17 shall be reduced, as provided in subsection ~~(5)~~ (4), by an
18 amount equal to the percentage of plaintiff's fault.

19 (4) ~~(5)~~ When reducing the judgment amount as provided in
20 ~~subsections~~ SUBSECTION (3), ~~and (4)~~, the court shall deter-
21 mine the ratio of total past damages to total future damages and
22 shall allocate the amounts to be deducted proportionally between
23 the past and future damages.

24 Section 2. Section 2949 of Act No. 236 of the Public Acts
25 of 1961, being section 600.2949 of the Michigan Compiled Laws, is
26 repealed.

1 Section 3. Sections 1621, 1627, 1629, 1641, 2925d, 2945,
2 2948, 6304, and 6306 of Act No. 436 of the Public Acts of 1961,
3 being sections 600.1621, 600.1627, 600.1629, 600.1641, 600.2925d,
4 600.2945, 600.2948, 600.6304, and 600.6306 of the Michigan
5 Compiled Laws, as amended by this amendatory act, and sections
6 2955, 2956, 2957, 2958, 2959, and 2960 of Act No. 436 of the
7 Public Acts of 1961, being sections 600.2955, 600.2956, 600.2957,
8 600.2958, 600.2959, and 600.2960 of the Michigan Compiled Laws,
9 as added by this amendatory act, apply to cases filed on or after
10 the effective date of this amendatory act.

11 Section 4. This amendatory act shall take effect September
12 1, 1995.