



# HOUSE BILL No. 5023

September 12, 1995, Introduced by Rep. Jamian and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 4701 and 6304 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," section 4701 as amended by Act No. 245 of the Public Acts of 1993 and section 6304 as amended by Act No. 78 of the Public Acts of 1993, being sections 600.4701 and 600.6304 of the Michigan Compiled Laws; and to add section 1484.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 4701 and 6304 of Act No. 236 of the  
2 Public Acts of 1961, section 4701 as amended by Act No. 245 of  
3 the Public Acts of 1993 and section 6304 as amended by Act No. 78  
4 of the Public Acts of 1993, being sections 600.4701 and 600.6304  
5 of the Michigan Compiled Laws, are amended and section 1484 is  
6 added to read as follows:

1           SEC. 1484. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE  
2 TOTAL AMOUNT OF DAMAGES RECOVERABLE BY EACH PLAINTIFF AGAINST A  
3 GOVERNMENTAL AGENCY FOR BODILY INJURY OR PROPERTY DAMAGE RESULT-  
4 ING FROM THE NEGLIGENT OPERATION OF AN EMERGENCY VEHICLE SHALL  
5 NOT EXCEED \$500,000.00 IN ECONOMIC DAMAGES AND \$250,000.00 IN  
6 NONECONOMIC DAMAGES IF EACH OF THE FOLLOWING CONDITIONS IS MET:

7           (A) THE ACTION AGAINST THE GOVERNMENTAL AGENCY IS PERMITTED  
8 UNDER SECTION 5 OF ACT NO. 170 OF THE PUBLIC ACTS OF 1964, BEING  
9 SECTION 691.1405 OF THE MICHIGAN COMPILED LAWS.

10          (B) AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE  
11 BODILY INJURY OR PROPERTY DAMAGE, THE GOVERNMENTAL AGENCY HAD IN  
12 EFFECT AN EMERGENCY VEHICLE OPERATION POLICY CERTIFIED PURSUANT  
13 TO THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT.

14          (C) AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE  
15 BODILY INJURY OR PROPERTY DAMAGE, THE EMERGENCY VEHICLE WAS  
16 ENGAGED IN EMERGENCY OPERATION.

17          (D) THE EMERGENCY VEHICLE OPERATOR WAS CERTIFIED BY THE GOV-  
18 ERNMENTAL AGENCY AS MEETING THE MINIMUM REQUIREMENTS ESTABLISHED  
19 FOR EMERGENCY VEHICLE OPERATIONS UNDER THE MODEL EMERGENCY VEHI-  
20 CLE OPERATION POLICY ACT, AND THAT CERTIFICATION WAS IN EFFECT AT  
21 THE TIME OF THE OCCURRENCE DESCRIBED IN SUBDIVISIONS (B) AND  
22 (C).

23          (2) A PERSON WHO SUSTAINS BODILY INJURY OR PROPERTY DAMAGE  
24 ARISING FROM THAT PERSON'S VIOLATION OF SECTION 479A OF THE  
25 MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,  
26 BEING SECTION 750.479A OF THE MICHIGAN COMPILED LAWS, OR SECTION  
27 602A OF THE MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE PUBLIC ACTS

1 OF 1949, BEING SECTION 257.602A OF THE MICHIGAN COMPILED LAWS,  
2 SHALL NOT RECOVER MONEY DAMAGES FROM AN INDIVIDUAL, ASSOCIATION,  
3 FIRM, PARTNERSHIP, CORPORATION, UNIT OF GOVERNMENT, GOVERNMENTAL  
4 AGENCY, OR ANY OTHER LEGAL ENTITY FOR THAT BODILY INJURY OR PROP-  
5 ERTY DAMAGE.

6 (3) IN A CIVIL ACTION DESCRIBED IN SUBSECTION (1), THE ISSUE  
7 OF WHETHER NEGLIGENCE OCCURRED IS A QUESTION OF FACT. HOWEVER,  
8 ALL OF THE FOLLOWING ISSUES ARE QUESTIONS OF LAW AND MAY BE  
9 DECIDED BY THE COURT UPON THE MOTION OF A PARTY AT ANY TIME  
10 BEFORE ENTRY OF JUDGMENT:

11 (A) WHETHER THE ACTION AGAINST THE GOVERNMENTAL AGENCY IS  
12 PERMITTED UNDER SECTION 5 OF ACT NO. 170 OF THE PUBLIC ACTS OF  
13 1964, BEING SECTION 691.1405 OF THE MICHIGAN COMPILED LAWS.

14 (B) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN  
15 THE BODILY INJURY OR PROPERTY DAMAGE, THE GOVERNMENTAL AGENCY HAD  
16 IN EFFECT AN EMERGENCY VEHICLE OPERATION POLICY CERTIFIED PURSU-  
17 ANT TO THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT.

18 (C) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN  
19 THE BODILY INJURY OR PROPERTY DAMAGE, THE EMERGENCY VEHICLE WAS  
20 ENGAGED IN EMERGENCY OPERATION.

21 (D) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN  
22 BODILY INJURY OR PROPERTY DAMAGE, THE EMERGENCY VEHICLE OPERATOR  
23 WAS CERTIFIED BY THE GOVERNMENTAL AGENCY AS MEETING MINIMUM  
24 REQUIREMENTS ESTABLISHED FOR EMERGENCY VEHICLE OPERATORS UNDER  
25 THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT.

1 (E) WHETHER THE BODILY INJURY OR PROPERTY DAMAGE SUSTAINED  
2 BY THE PERSON DESCRIBED IN SUBSECTION (2) AROSE FROM THE PERSON'S  
3 VIOLATION OF A LAW IDENTIFIED IN SUBSECTION (2).

4 (4) AS USED IN THIS SECTION:

5 (A) "EMERGENCY OPERATION" MEANS THAT TERM AS DEFINED IN SEC-  
6 TION 2 OF THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT.

7 (B) "EMERGENCY VEHICLE" MEANS THAT TERM AS DEFINED IN SEC-  
8 TION 2 OF THE MODEL EMERGENCY VEHICLE OPERATION ACT.

9 (C) "GOVERNMENTAL AGENCY" MEANS THAT TERM AS DEFINED IN SEC-  
10 TION 1 OF ACT NO. 170 OF THE PUBLIC ACTS OF 1964, BEING SECTION  
11 691.41401 OF THE MICHIGAN COMPILED LAWS, AND INCLUDES A COMBINA-  
12 TION OF 1 OR MORE GOVERNMENTAL AGENCIES ACTING UNDER A SINGLE  
13 EMERGENCY VEHICLE OPERATION POLICY CERTIFIED UNDER THE MODEL  
14 EMERGENCY VEHICLE OPERATION POLICY ACT.

15 Sec. 4701. As used in this chapter:

16 (a) "Crime" means 1 of the following offenses in connection  
17 with which the forfeiture of property is sought:

18 (i) A violation of section 4, 5, or 7 of the medicaid false  
19 claim act, Act No. 72 of the Public Acts of 1977, being sections  
20 400.604, 400.605, and 400.607 of the Michigan Compiled Laws.

21 (ii) A violation of section 2 or 3 of the Michigan antitrust  
22 reform act, Act No. 274 of the Public Acts of 1984, being sec-  
23 tions 445.772 and 445.773 of the Michigan Compiled Laws.

24 (iii) A violation of section 409 of the uniform securities  
25 act, Act No. 265 of the Public Acts of 1964, being section  
26 451.809 of the Michigan Compiled Laws.

1 (iv) A violation of section 5 or 7 of Act No. 33 of the  
2 Public Acts of 1978, being sections 722.675 and 722.677 of the  
3 Michigan Compiled Laws.

4 (v) A violation of section 75, 94, 95, 96, 100, 104, 105,  
5 106, 110, 112, 117, 118, 119, 120, 121, 124, 145c, 157q, 157r,  
6 174, 175, 176, 180, 181, 182, 213, 214, 218, 224, 248, 249, 250,  
7 251, 252, 253, 254, 255, 271, 272, 273, 274, 300, 356, 357, 357a,  
8 359, 360, 479A(3), (4), OR (5), 529, 530, 531, or 535 of the  
9 Michigan penal code, Act No. 328 of the Public Acts of 1931,  
10 being sections 750.75, 750.94, 750.95, 750.96, 750.100, 750.104,  
11 750.105, 750.106, 750.110, 750.112, 750.117, 750.118, 750.119,  
12 750.120, 750.121, 750.124, 750.145c, 750.157q, 750.157r, 750.174,  
13 750.175, 750.176, 750.180, 750.181, 750.182, 750.213, 750.214,  
14 750.218, 750.224, 750.248, 750.249, 750.250, 750.251, 750.252,  
15 750.253, 750.254, 750.255, 750.271, 750.272, 750.273, 750.274,  
16 750.300, 750.356, 750.357, 750.357a, 750.359, 750.360, 750.479a,  
17 750.529, 750.530, 750.531, and 750.535 of the Michigan Compiled  
18 Laws.

19 (vi) A violation of section 219a of Act No. 328 of the  
20 Public Acts of 1931, being section 750.219a of the Michigan  
21 Compiled Laws, if the total value of the telephone service  
22 obtained is over \$100.00.

23 (vii) A VIOLATION OF SECTION 602A(3), (4), OR (5) OF THE  
24 MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE PUBLIC ACTS OF 1949,  
25 BEING SECTION 257.602A OF THE MICHIGAN COMPILED LAWS.

26 (viii) ~~(vii)~~ Conspiracy to commit an offense listed in  
27 subparagraphs (i) to ~~(vi)~~ (vii).

1           (ix) ~~(viii)~~ A violation of the recreational trespass act,  
2 Act No. 323 of the Public Acts of 1976, being sections 317.171 to  
3 317.181 of the Michigan Compiled Laws, that is punishable under  
4 section 9(2) of the recreational trespass act, Act No. 323 of the  
5 Public Acts of 1976, being section 317.179 of the Michigan  
6 Compiled Laws.

7           (b) "Instrumentality of a crime" means any property, other  
8 than real property, the use of which contributes directly and  
9 materially to the commission of a crime.

10          (c) "Person" means an individual, corporation, partnership,  
11 or other business entity, or an unincorporated or voluntary  
12 association.

13          (d) "Proceeds of a crime" means any property obtained  
14 through the commission of a crime, including any appreciation in  
15 the value of the property.

16          (e) "Security interest" means any interest in real or per-  
17 sonal property that secures payment or performance of an  
18 obligation.

19          (f) "Substituted proceeds of a crime" means any property  
20 obtained or any gain realized by the sale or exchange of proceeds  
21 of a crime.

22          Sec. 6304. (1) In a personal injury action involving fault  
23 of more than 1 party to the action, including third-party  
24 defendants, the court, unless otherwise agreed by all parties to  
25 the action, shall instruct the jury to answer special interroga-  
26 tories or, if there is no jury, shall make findings indicating  
27 both of the following:

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

2 (b) The percentage of the total fault of all of the parties  
3 regarding each claim as to each plaintiff, defendant, and  
4 third-party defendant.

5 (2) In determining the percentages of fault under subsection  
6 (1)(b), the trier of fact shall consider both the nature of the  
7 conduct of each party at fault and the extent of the causal rela-  
8 tion between the conduct and the damages claimed.

9 (3) If it is determined under subsections (1) and (2) that a  
10 plaintiff is not at fault, subsections (5) and ~~(6)~~ (8) do not  
11 apply.

12 (4) Subsections (5) and ~~(6)~~ (8) do not apply to a products  
13 liability action, as defined in section 2945.

14 (5) The court shall determine the award of damages to each  
15 plaintiff in accordance with the findings under subsection (1),  
16 subject to any reduction under subsection (6) or section 2925d or  
17 6303, and enter judgment against each party, including a  
18 third-party defendant, except that judgment shall not be entered  
19 against a person who has been released from liability pursuant to  
20 section 2925d. Except as otherwise provided in subsection ~~(7)~~  
21 (8), a person shall not be required to pay damages in an amount  
22 greater than his or her percentage of fault.

23 (6) In an action alleging medical malpractice, the court  
24 shall reduce an award of damages in excess of 1 of the limita-  
25 tions set forth in section 1483 to the amount of the appropriate  
26 limitation set forth in section 1483. The jury shall not be  
27 advised by the court or by counsel for either party of the

1 limitations set forth in section 1483 or any other provision of  
2 section 1483.

3 (7) THE COURT SHALL REDUCE AN AWARD OF DAMAGES IN EXCESS OF  
4 THE LIMITATION SET FORTH IN SECTION 1484. THE JURY SHALL NOT BE  
5 ADVISED BY THE COURT OR BY COUNSEL FOR EITHER PARTY OF THE LIM-  
6 TATION SET FORTH IN SECTION 1484.

7 (8) ~~(7)~~ Except as otherwise provided in this subsection  
8 and subsection ~~(8)~~ (9), upon motion made not later than 6  
9 months after a final judgment is entered, the court shall deter-  
10 mine whether all or part of a party's share of the obligation is  
11 uncollectible from that party, and shall reallocate any uncol-  
12 lectible amount among the other parties according to their  
13 respective percentages of fault as determined under subsection  
14 (1). A party shall not be required to pay a percentage of any  
15 uncollectible amount that exceeds that party's percentage of  
16 fault as determined under subsection (1). The party whose  
17 liability is reallocated continues to be subject to contribution  
18 and to any continuing liability to the plaintiff on the  
19 judgment.

20 (9) ~~(8)~~ Notwithstanding subsection (3), a governmental  
21 agency, other than a governmental hospital or medical care facil-  
22 ity, is not required to pay a percentage of any uncollectible  
23 amount that exceeds the governmental agency's percentage of fault  
24 as determined under subsection (1).

25 Section 2. This amendatory act shall not take effect unless  
26 all of the following bills of the 88th Legislature are enacted  
27 into law:



1 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5022 (request  
2 no. 02189'95).

3 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5024 (request  
4 no. 02189'95 b).

5 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 5025 (request  
6 no. 02189'95 c).

7 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 5026 (request  
8 no. 02189'95 d).