



# SENATE BILL No. 344

February 28, 1995, Introduced by Senators GOUGEON, SHUGARS, CISKY, EMMONS, NORTH, SCHWARZ, CARL, MCMANUS, STEIL, GEAKE, ROGERS, STILLE, GAST, SCHUETTE and BENNETT and referred to the Committee on Economic Development, International Trade and Regulatory Affairs.

A bill to amend sections 1629, 2945, 2946, 2947, 2948, 2949, 5805, and 6304 of Act No. 236 of the Public Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

section 1629 as added by Act No. 178 of the Public Acts of 1986, section 5805 as amended by Act No. 115 of the Public Acts of 1988, and section 6304 as amended by Act No. 78 of the Public Acts of 1993, being sections 600.1629, 600.2945, 600.2946, 600.2947, 600.2948, 600.2949, 600.5805, and 600.6304 of the Michigan Compiled Laws; and to add sections 2946a, 2955, and 2956.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1629, 2945, 2946, 2947, 2948, 2949,  
2 5805, and 6304 of Act No. 236 of the Public Acts of 1961, section  
3 1629 as added by Act No. 178 of the Public Acts of 1986, section

1 5805 as amended by Act No. 115 of the Public Acts of 1988, and  
2 section 6304 as amended by Act No. 78 of the Public Acts of 1993,  
3 being sections 600.1629, 600.2945, 600.2946, 600.2947, 600.2948,  
4 600.2949, 600.5805, and 600.6304 of the Michigan Compiled Laws,  
5 are amended and sections 2946a, 2955, and 2956 are added to read  
6 as follows:

7       Sec. 1629. (1) Subject to subsection (2), in an action  
8 based on tort, INCLUDING A PRODUCT LIABILITY ACTION, the follow-  
9 ing provisions apply:

10       (a) ~~A~~ THE county in which ~~all or a part of the cause of~~  
11 ~~action arose~~ THE INJURY OCCURRED and in which either of the fol-  
12 lowing apply is a proper county in which to commence and try the  
13 action:

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

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

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

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

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

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

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

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

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

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

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

24 Sec. 2945. As used in sections 1629, 2946 to 2949, and  
25 ~~section~~ 5805: ~~, "products"~~

26 (A) "ALTERATION" MEANS A MATERIAL CHANGE IN A PRODUCT AFTER  
27 THE PRODUCT LEAVES THE CONTROL OF THE MANUFACTURER OR SELLER.

1 ALTERATION INCLUDES A CHANGE IN THE PRODUCT'S DESIGN, PACKAGING,  
2 OR LABELING; A CHANGE TO OR REMOVAL OF A SAFETY FEATURE, WARNING,  
3 OR INSTRUCTION; DETERIORATION OR DAMAGE CAUSED BY FAILURE TO  
4 OBSERVE ROUTINE CARE AND MAINTENANCE OR FAILURE TO OBSERVE AN  
5 INSTALLATION, PREPARATION, OR STORAGE PROCEDURE; OR A CHANGE  
6 RESULTING FROM REPAIR, RENOVATION, RECONDITIONING, RECYCLING, OR  
7 RECLAMATION OF THE PRODUCT.

8 (B) "CONSUMER PRICE INDEX" MEANS THE MOST COMPREHENSIVE  
9 INDEX OF CONSUMER PRICES AVAILABLE FOR THIS STATE FROM THE BUREAU  
10 OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR.

11 (C) "ECONOMIC LOSS" MEANS OBJECTIVELY VERIFIABLE PECUNIARY  
12 DAMAGES ARISING FROM MEDICAL EXPENSES OR MEDICAL CARE, REHABILI-  
13 TATION SERVICES, CUSTODIAL CARE, LOSS OF WAGES, LOSS OF FUTURE  
14 EARNINGS, BURIAL COSTS, LOSS OF USE OF PROPERTY, COSTS OF REPAIR  
15 OR REPLACEMENT OF PROPERTY, COSTS OF OBTAINING SUBSTITUTE DOMES-  
16 TIC SERVICES, LOSS OF EMPLOYMENT, OR OTHER OBJECTIVELY VERIFIABLE  
17 MONETARY LOSSES.

18 (D) "LIMITED LIFE PRODUCT" MEANS A PRODUCT THAT IS DESIGNED  
19 TO BE USED ONLY DURING A SPECIFIC PERIOD OF TIME AFTER MANUFAC-  
20 TURE AND UPON THE EXPIRATION OF THAT PERIOD OF TIME BECOMES USE-  
21 LESS, INEFFECTIVE, OR DANGEROUS OR CARRIES A MANUFACTURER'S WARN-  
22 ING AGAINST USE OF THE PRODUCT AFTER THE SPECIFIC PERIOD OF TIME.

23 (E) "MISUSE" MEANS USE OF A PRODUCT IN A MATERIALLY DIFFER-  
24 ENT MANNER THAN THE PRODUCT'S INTENDED USE. MISUSE INCLUDES USES  
25 INCONSISTENT WITH THE SPECIFICATIONS AND STANDARDS APPLICABLE TO  
26 THE PRODUCT, USES CONTRARY TO A WARNING OR INSTRUCTION PROVIDED  
27 BY THE MANUFACTURER, SELLER, OR ANOTHER PERSON POSSESSING

1 KNOWLEDGE OR TRAINING REGARDING THE USE OR MAINTENANCE OF THE  
2 PRODUCT, AND USES OTHER THAN THOSE FOR WHICH THE PRODUCT WOULD BE  
3 CONSIDERED SUITABLE BY A REASONABLY PRUDENT PERSON IN THE SAME OR  
4 SIMILAR CIRCUMSTANCES.

5 (F) "NONECONOMIC LOSS" MEANS ANY TYPE OF PAIN, SUFFERING,  
6 INCONVENIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, MENTAL  
7 ANGUISH, EMOTIONAL DISTRESS, LOSS OF SOCIETY AND COMPANIONSHIP,  
8 LOSS OF CONSORTIUM, INJURY TO REPUTATION, HUMILIATION, OR OTHER  
9 NONPECUNIARY DAMAGES.

10 (G) "PRODUCT" INCLUDES ANY AND ALL COMPONENT PARTS TO A  
11 PRODUCT.

12 (H) "PRODUCTION" MEANS MANUFACTURE, CONSTRUCTION, DESIGN,  
13 FORMULATION, DEVELOPMENT OF STANDARDS, PERFORMANCE, PREPARATION,  
14 PROCESSING, ASSEMBLY, INSPECTION, TESTING, LISTING, CERTIFYING,  
15 WARNING, INSTRUCTING, MARKETING, SELLING, ADVERTISING, PACKAGING,  
16 OR LABELING.

17 (I) "PRODUCT liability action" means an action based on any  
18 legal or equitable theory of liability brought for ~~or on account~~  
19 ~~of~~ THE death OF A PERSON or FOR injury to A person or property  
20 caused by or resulting from the ~~manufacture, construction,~~  
21 ~~design, formula, development of standards, preparation, process-~~  
22 ~~ing, assembly, inspection, testing, listing, certifying, warning,~~  
23 ~~instructing, marketing, advertising, packaging, or labeling~~  
24 PRODUCTION of a product or a component of a product.

25 (J) "SOPHISTICATED USER" MEANS A PERSON OR ENTITY THAT, BY  
26 VIRTUE OF TRAINING, EXPERIENCE, A PROFESSION, OR LEGAL  
27 OBLIGATIONS, IS OR IS GENERALLY EXPECTED TO BE KNOWLEDGEABLE

1 ABOUT A PRODUCT'S PROPERTIES, INCLUDING A POTENTIAL HAZARD OR  
2 ADVERSE EFFECT.

3       Sec. 2946. (1) ~~it shall be admissible as evidence~~ A PRE-  
4 SUMPTION ARISES in a ~~products~~ PRODUCT liability action that  
5 ~~the manufacture, construction, design, formula, development of~~  
6 ~~standards, preparation, processing, assembly, inspection, test-~~  
7 ~~ing, listing, certifying, warning, instructing, marketing, adver-~~  
8 ~~tising, packaging, or labeling was done pursuant to~~ A PRODUCT IS  
9 NOT DEFECTIVE IF THE PRODUCTION WAS IN ACCORDANCE WITH the gener-  
10 ally recognized and prevailing nongovernmental standards in exis-  
11 tence at the time THE SPECIFIC UNIT OF the product was sold or  
12 delivered by the defendant to the initial purchaser or user.  
13 THIS PRESUMPTION MAY BE REBUTTED ONLY BY CLEAR AND CONVINCING  
14 EVIDENCE.

15       (2) ~~it shall be admissible in evidence in a products~~  
16 ~~liability action that the manufacture, construction, design, for-~~  
17 ~~mula, development of standards, preparation, processing, assem-~~  
18 ~~bly, inspection, testing, listing, certifying, warning, instruct-~~  
19 ~~ing, marketing, advertising, packaging, or labeling was done pur-~~  
20 ~~suant to the federal and state law, rules, or regulations in~~  
21 ~~effect at the time the product was sold or delivered by the~~  
22 ~~defendant to the initial purchaser or user.~~ IN A PRODUCT LIABIL-  
23 ITY ACTION BROUGHT AGAINST A MANUFACTURER OR SELLER FOR HARM  
24 ALLEGEDLY CAUSED BY A DESIGN DEFECT, THE MANUFACTURER OR SELLER  
25 IS NOT LIABLE UNLESS THE PLAINTIFF ESTABLISHES THAT THE PRODUCT  
26 WAS NOT REASONABLY SAFE AT THE TIME THE SPECIFIC UNIT OF THE  
27 PRODUCT LEFT THE CONTROL OF THE MANUFACTURER OR SELLER AND THAT,

1 ACCORDING TO GENERALLY ACCEPTED DESIGN, ENGINEERING, AND  
2 MANUFACTURING PRACTICES AT THE TIME THE SPECIFIC UNIT OF THE  
3 PRODUCT LEFT THE CONTROL OF THE MANUFACTURER OR SELLER, A PRACTI-  
4 CAL AND TECHNICALLY FEASIBLE ALTERNATIVE DESIGN WAS AVAILABLE  
5 THAT WOULD HAVE PREVENTED THE HARM WITHOUT SIGNIFICANTLY IMPAIR-  
6 ING THE USEFULNESS OR DESIRABILITY OF THE PRODUCT TO USERS AND  
7 WITHOUT CREATING EQUAL OR GREATER RISK OF HARM TO OTHERS. AN  
8 ALTERNATIVE DESIGN IS PRACTICAL AND FEASIBLE ONLY IF THE TECHNI-  
9 CAL, MEDICAL, OR SCIENTIFIC KNOWLEDGE RELATING TO THE DESIGN OF  
10 THE PRODUCT WAS, AT THE TIME THE SPECIFIC UNIT OF THE PRODUCT  
11 LEFT THE CONTROL OF THE MANUFACTURER OR SELLER, DEVELOPED, AVAIL-  
12 ABLE, AND CAPABLE OF USE IN THE DESIGN AND MANUFACTURE OF THE  
13 PRODUCT AND ECONOMICALLY FEASIBLE FOR USE BY THE MANUFACTURER.

14 (3) ~~Evidence of a change in the philosophy, theory, knowl-~~  
15 ~~edge, technique, or procedures of or with regard to the manufac-~~  
16 ~~ture, construction, design, formula, development of standards,~~  
17 ~~preparation, processing, assembly, inspection, testing, listing,~~  
18 ~~certifying, warning, instructing, marketing, advertising, packag-~~  
19 ~~ing, or labeling made, learned, placed in use or discontinued~~  
20 ~~after the event of death or injury to person or property shall~~  
21 ~~not be admissible in a product liability action to prove~~  
22 ~~liability.~~ WITH REGARD TO THE PRODUCTION OF A PRODUCT THAT IS  
23 THE SUBJECT OF A PRODUCT LIABILITY ACTION, EVIDENCE OF A PHILOSO-  
24 PHY, THEORY, KNOWLEDGE, TECHNIQUE, OR PROCEDURE THAT IS LEARNED,  
25 PLACED IN USE, OR DISCONTINUED AFTER THE EVENT RESULTING IN THE  
26 DEATH OF THE PERSON OR INJURY TO THE PERSON OR PROPERTY IS NOT  
27 ADMISSIBLE.

1 (4) IN A PRODUCT LIABILITY ACTION BROUGHT AGAINST A  
2 MANUFACTURER OR SELLER FOR HARM ALLEGEDLY CAUSED BY A PRODUCT,  
3 THE MANUFACTURER OR SELLER IS NOT LIABLE IF, AT THE TIME THE SPE-  
4 CIFIC UNIT OF THE PRODUCT WAS SOLD OR DELIVERED TO THE INITIAL  
5 PURCHASER OR USER, THE ASPECT OF THE PRODUCTION THAT ALLEGEDLY  
6 CAUSED THE HARM WAS IN COMPLIANCE WITH STANDARDS SET FORTH IN A  
7 FEDERAL OR STATE STATUTE, OR WAS APPROVED OR WAS IN COMPLIANCE  
8 WITH REGULATIONS OR STANDARDS PROMULGATED BY A FEDERAL OR STATE  
9 AGENCY RESPONSIBLE FOR REVIEWING THE SAFETY OF THE PRODUCT.

10 SEC. 2946A. (1) IN A PRODUCT LIABILITY ACTION, A COURT  
11 SHALL NOT AWARD DAMAGES FOR NONECONOMIC LOSS IN AN AMOUNT THAT  
12 EXCEEDS \$225,000.00 UNLESS THE JUDGE FINDS THAT THE DEFECT IN THE  
13 PRODUCT CAUSED EITHER THE PERSON'S DEATH OR LOSS OF A VITAL  
14 BODILY FUNCTION, IN WHICH CASE THE COURT SHALL NOT AWARD DAMAGES  
15 FOR NONECONOMIC LOSSES IN AN AMOUNT THAT EXCEEDS \$500,000.00.  
16 THE STATE TREASURER SHALL ADJUST THE LIMITATIONS SET FORTH IN  
17 THIS SUBSECTION BY AN AMOUNT DETERMINED BY THE STATE TREASURER AT  
18 THE END OF EACH CALENDAR YEAR TO REFLECT THE CUMULATIVE ANNUAL  
19 PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX.

20 (2) IN AWARDING DAMAGES IN A PRODUCT LIABILITY ACTION, THE  
21 TRIER OF FACT SHALL ITEMIZE DAMAGES INTO ECONOMIC AND NONECONOMIC  
22 LOSSES. NEITHER THE COURT NOR COUNSEL FOR A PARTY SHALL INFORM  
23 THE JURY OF THE LIMITATIONS UNDER SUBSECTION (1). THE COURT  
24 SHALL ADJUST AN AWARD OF NONECONOMIC LOSS TO CONFORM TO THE LIM-  
25 TATIONS UNDER SUBSECTION (1).

26 Sec. 2947. (1) ~~it shall be admissible as evidence in a~~  
27 ~~products~~ A MANUFACTURER OR SELLER IS NOT LIABLE IN A PRODUCT



1 liability action ~~that the cause of the death or injury to person~~  
2 ~~or property was~~ FOR HARM CAUSED BY an alteration ~~or~~  
3 ~~modification~~ of the product. ~~, or its application or use, made~~  
4 ~~by a person other than and without specific directions from the~~  
5 ~~defendant.~~ WHETHER THERE HAS BEEN AN ALTERATION OF A PRODUCT IS  
6 A LEGAL ISSUE TO BE RESOLVED BY THE COURT.

7 (2) IT IS AN ABSOLUTE DEFENSE TO A PRODUCT LIABILITY ACTION  
8 INVOLVING A LIMITED LIFE PRODUCT THAT THE USE OF THE PRODUCT THAT  
9 ALLEGEDLY CAUSED THE DEATH OF THE PERSON OR THE INJURY TO THE  
10 PERSON OR PROPERTY OCCURRED AFTER AN IDENTIFIED EXPIRATION DATE  
11 FOR THE LIMITED LIFE PRODUCT.

12 (3) A MANUFACTURER OR SELLER IS NOT LIABLE IN A PRODUCT  
13 LIABILITY ACTION FOR HARM CAUSED BY MISUSE OF A PRODUCT.

14 (4) A MANUFACTURER OR SELLER IS NOT LIABLE IN A PRODUCT  
15 LIABILITY ACTION IF THE PURCHASER OR USER OF THE PRODUCT WAS  
16 AWARE THAT USE OF THE PRODUCT CREATED A RISK OF PERSONAL INJURY  
17 AND VOLUNTARILY EXPOSED HIMSELF OR HERSELF TO THAT RISK.

18 (5) A MANUFACTURER OR SELLER IS NOT LIABLE FOR FAILING TO  
19 WARN IN A PRODUCT LIABILITY ACTION IF THE PRODUCT IS PROVIDED TO  
20 A SOPHISTICATED USER WHO USES THE PRODUCT OR SELECTS, PRESCRIBES,  
21 OR INSTALLS THE PRODUCT FOR USE BY A PERSON WHO IS NOT A SOPHIS-  
22 TICATED USER.

23 (6) A MANUFACTURER OR SELLER IS NOT LIABLE IN A PRODUCT  
24 LIABILITY ACTION IF THE ALLEGED HARM WAS CAUSED BY AN INHERENT  
25 CHARACTERISTIC OF THE PRODUCT THAT IS A GENERIC ASPECT OF THE  
26 PRODUCT THAT CANNOT BE ELIMINATED WITHOUT SUBSTANTIALLY  
27 COMPROMISING THE PRODUCT'S USEFULNESS OR DESIRABILITY AND THAT IS

1 RECOGNIZED BY THE ORDINARY PERSON WITH THE ORDINARY KNOWLEDGE  
2 COMMON TO THE COMMUNITY.

3 (7) IN A PRODUCT LIABILITY ACTION, A SELLER OTHER THAN A  
4 MANUFACTURER IS NOT LIABLE FOR HARM ALLEGEDLY CAUSED BY THE PROD-  
5 UCT UNLESS EITHER OF THE FOLLOWING IS TRUE:

6 (A) THE SELLER FAILED TO EXERCISE REASONABLE CARE WITH  
7 RESPECT TO THE PRODUCT AND THAT FAILURE WAS A PROXIMATE CAUSE OF  
8 THE PERSON'S INJURIES.

9 (B) THE SELLER MADE AN EXPRESS WARRANTY AS TO THE PRODUCT,  
10 THE PRODUCT FAILED TO CONFORM TO THE WARRANTY, AND THE FAILURE TO  
11 CONFORM TO THE WARRANTY WAS A PROXIMATE CAUSE OF THE PERSON'S  
12 HARM.

13 Sec. 2948. (1) ~~it shall be~~ EVIDENCE IS admissible ~~as~~  
14 ~~evidence~~ in a ~~products~~ PRODUCT liability action that, before  
15 the ~~event of~~ death OF THE PERSON or injury to THE person or  
16 property, pamphlets, booklets, labels, or other written warnings  
17 were provided ~~which~~ THAT gave notice to foreseeable users of  
18 the material risk of injury, death, or damage connected with the  
19 foreseeable use of the product or provided instructions as to the  
20 foreseeable uses, applications, or limitations of the product  
21 ~~which~~ THAT the defendant knew or should have known.

22 (2) A DEFENDANT IS NOT LIABLE FOR FAILURE TO WARN OF A MATE-  
23 RIAL RISK THAT IS OR SHOULD BE OBVIOUS TO A REASONABLY PRUDENT  
24 PRODUCT USER OR A MATERIAL RISK THAT IS OR SHOULD BE A MATTER OF  
25 COMMON KNOWLEDGE TO PERSONS IN THE SAME OR SIMILAR POSITION AS  
26 THE PERSON UPON WHOSE INJURY OR DEATH THE CLAIM IS BASED IN A  
27 PRODUCT LIABILITY ACTION.

1 (3) IN A PRODUCT LIABILITY ACTION BROUGHT AGAINST A  
2 MANUFACTURER OR SELLER FOR HARM ALLEGEDLY CAUSED BY A FAILURE TO  
3 PROVIDE ADEQUATE WARNINGS OR INSTRUCTIONS, A MANUFACTURER OR  
4 SELLER IS NOT LIABLE UNLESS THE PLAINTIFF PROVES THAT THE MANU-  
5 FACTURER KNEW OR SHOULD HAVE KNOWN ABOUT THE DEFECT THAT CAUSED  
6 THE HARM BASED ON THE SCIENTIFIC, TECHNICAL, OR MEDICAL INFORMA-  
7 TION REASONABLY AVAILABLE AT THE TIME THE SPECIFIC UNIT OF THE  
8 PRODUCT LEFT THE CONTROL OF THE MANUFACTURER.

9 Sec. 2949. ~~(1) In all products liability actions brought~~  
10 ~~to recover damages resulting from death or injury to person or~~  
11 ~~property, the fact that the plaintiff may have been guilty of~~  
12 ~~contributory negligence shall not bar a recovery by the plaintiff~~  
13 ~~or the plaintiff's legal representatives, but damages sustained~~  
14 ~~by the plaintiff shall be diminished in proportion to the amount~~  
15 ~~of negligence attributed to the plaintiff.~~ (2) If the court  
16 determines that ~~the~~ A claim or defense is frivolous, the court  
17 may award costs and reasonable attorney's fees to the prevailing  
18 party in a ~~products~~ PRODUCT liability action.

19 SEC. 2955. (1) IN AN ACTION FOR THE DEATH OF A PERSON OR  
20 FOR INJURY TO A PERSON OR PROPERTY, A SCIENTIFIC OPINION RENDERED  
21 BY AN OTHERWISE QUALIFIED EXPERT IS NOT ADMISSIBLE UNLESS THE  
22 COURT DETERMINES THAT THE OPINION IS RELIABLE AND WILL ASSIST THE  
23 TRIER OF FACT. IN MAKING THAT DETERMINATION, THE COURT SHALL  
24 EXAMINE THE OPINION AND THE BASIS FOR THE OPINION, WHICH BASIS  
25 INCLUDES THE FACTS, TECHNIQUE, METHODOLOGY, AND REASONING RELIED  
26 ON BY THE EXPERT, AND SHALL CONSIDER ALL OF THE FOLLOWING  
27 FACTORS:

1 (A) WHETHER THE OPINION AND ITS BASIS HAVE BEEN SUBJECTED TO  
2 SCIENTIFIC TESTING AND REPLICATION.

3 (B) WHETHER THE OPINION AND ITS BASIS HAVE BEEN SUBJECTED TO  
4 PEER REVIEW PUBLICATION.

5 (C) THE EXISTENCE AND MAINTENANCE OF GENERALLY ACCEPTED  
6 STANDARDS GOVERNING THE APPLICATION AND INTERPRETATION OF A METH-  
7 ODOLOGY OR TECHNIQUE AND WHETHER THE OPINION AND ITS BASIS ARE  
8 CONSISTENT WITH THOSE STANDARDS.

9 (D) THE KNOWN OR POTENTIAL ERROR RATE OF THE OPINION AND ITS  
10 BASIS.

11 (E) THE DEGREE TO WHICH THE OPINION AND ITS BASIS ARE GENER-  
12 ALLY ACCEPTED WITHIN THE RELEVANT EXPERT COMMUNITY.

13 (F) WHETHER THE BASIS FOR THE OPINION IS RELIABLE AND  
14 WHETHER EXPERTS IN THAT FIELD WOULD RELY ON THE SAME BASIS TO  
15 REACH THE TYPE OF OPINION BEING PROFFERED.

16 (G) WHETHER THE OPINION OR METHODOLOGY IS RELIED UPON BY  
17 EXPERTS OUTSIDE OF THE CONTEXT OF LITIGATION.

18 (2) A NOVEL METHODOLOGY OR FORM OF SCIENTIFIC EVIDENCE MAY  
19 BE ADMITTED INTO EVIDENCE ONLY IF ITS PROPONENT ESTABLISHES THAT  
20 IT HAS ACHIEVED GENERAL SCIENTIFIC ACCEPTANCE AMONG IMPARTIAL AND  
21 DISINTERESTED EXPERTS IN THE FIELD.

22 SEC. 2956. (1) IT IS AN ABSOLUTE DEFENSE IN AN ACTION FOR  
23 THE DEATH OF A PERSON OR FOR INJURY TO A PERSON OR PROPERTY THAT  
24 THE PERSON UPON WHOSE DEATH OR INJURY THE ACTION IS BASED WAS  
25 INTOXICATED OR UNDER THE INFLUENCE OF INTOXICATING ALCOHOL OR A  
26 CONTROLLED SUBSTANCE, AND AS A RESULT OF THAT INTOXICATION OR  
27 INFLUENCE, THAT PERSON WAS A CAUSE OR CONTRIBUTED TO THE ACCIDENT

1 OR EVENT THAT RESULTED IN THE DEATH OR INJURY. A PERSON WHOSE  
2 BLOOD ALCOHOL LEVEL IS .08% OR HIGHER IS PRESUMED TO BE UNDER THE  
3 INFLUENCE OF INTOXICATING ALCOHOL.

4 (2) AS USED IN THIS SECTION:

5 (A) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN  
6 SECTION 7401 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC  
7 ACTS OF 1978, BEING SECTION 333.7401 OF THE MICHIGAN COMPILED  
8 LAWS.

9 (B) "UNDER THE INFLUENCE OF INTOXICATING ALCOHOL OR A CON-  
10 TROLLED SUBSTANCE" MEANS THAT, AS A RESULT OF A PERSON DRINKING,  
11 INGESTING, SMOKING, OR OTHERWISE CONSUMING INTOXICATING ALCOHOL  
12 OR A CONTROLLED SUBSTANCE, THE PERSON'S SENSES ARE IMPAIRED TO  
13 THE POINT THAT THE ABILITY TO REACT IS DIMINISHED FROM WHAT IT  
14 WOULD BE HAD THE PERSON NOT CONSUMED ALCOHOL OR A CONTROLLED  
15 SUBSTANCE.

16 Sec. 5805. (1) A person shall not bring or maintain an  
17 action to recover damages for injuries to persons or property  
18 unless, after the claim first accrued to the plaintiff or to  
19 someone through whom the plaintiff claims, the action is com-  
20 menced within the periods of time prescribed by this section.

21 (2) The period of limitations is 2 years for an action  
22 charging assault, battery, or false imprisonment.

23 (3) The period of limitations is 2 years for an action  
24 charging malicious prosecution.

25 (4) Except as otherwise provided in this chapter, the period  
26 of limitations is 2 years for an action charging malpractice.

1 (5) The period of limitations is 2 years for an action  
2 against a sheriff charging misconduct or neglect of office by the  
3 sheriff or the sheriff's deputies.

4 (6) The period of limitations is 2 years after the expira-  
5 tion of the year for which a constable was elected for actions  
6 based on the constable's negligence or misconduct as constable.

7 (7) The period of limitations is 1 year for an action charg-  
8 ing libel or slander.

9 (8) The period of limitations is 3 years after the time of  
10 the death or injury for all other actions to recover damages for  
11 the death of a person, or for injury to a person or property.

12 (9) The period of limitations is 3 years for a ~~products-~~  
13 PRODUCT liability action. ~~However, in the case of a product~~  
14 ~~which has been in use for not less than 10 years, the plaintiff,~~  
15 ~~in proving a prima facie case, shall be required to do so without~~  
16 ~~benefit of any presumption.~~ NOTWITHSTANDING SUBSECTION (8) AND  
17 THIS SUBSECTION, AN ACTION BASED ON PRODUCT LIABILITY SHALL NOT  
18 BE COMMENCED AFTER THE EXPIRATION OF 10 YEARS AFTER THE DATE THE  
19 SPECIFIC UNIT OF THE PRODUCT THAT ALLEGEDLY CAUSED THE DEATH OR  
20 INJURY WAS DELIVERED TO THE INITIAL PURCHASER OR USER.

21 (10) The period of limitations for an action against a state  
22 licensed architect, professional engineer, land surveyor, or con-  
23 tractor based on an improvement to real property shall be as pro-  
24 vided in section 5839.

25 Sec. 6304. (1) In ~~a personal injury action involving fault~~  
26 ~~of more than 1 party to the action, including third party~~  
27 ~~defendants~~ AN ACTION FOR THE DEATH OF A PERSON OR FOR INJURY TO

1 A PERSON OR PROPERTY, REGARDLESS OF THE THEORY OF LIABILITY, the  
2 court, unless otherwise agreed by all parties to the action,  
3 shall instruct the jury to answer special interrogatories or, if  
4 there is no jury, shall make findings indicating both of the  
5 following:

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

7 (b) The percentage of the total fault of all ~~of the parties~~  
8 ~~regarding each claim as to each plaintiff, defendant, and~~  
9 ~~third party defendant~~ PERSONS THAT CONTRIBUTED TO THE DEATH OR  
10 INJURY, INCLUDING EACH PLAINTIFF AND EACH PERSON RELEASED FROM  
11 LIABILITY UNDER SECTION 2925D, REGARDLESS OF WHETHER THE PERSON  
12 WAS OR COULD HAVE BEEN NAMED AS A PARTY TO THE ACTION.

13 (2) In determining the percentages of fault under subsection  
14 (1)(b), the trier of fact shall consider both the nature of the  
15 conduct of each ~~party~~ PERSON at fault and the extent of the  
16 causal relation between the conduct and the damages claimed.

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

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

22 (3) ~~(5)~~ The court shall determine the award of damages to  
23 each plaintiff in accordance with the findings under subsection  
24 (1), subject to any reduction under subsection ~~(6)~~ (5) or sec-  
25 tion 2925d or 6303, and SHALL enter judgment against each party,  
26 including a third-party defendant, except that judgment shall not  
27 be entered against ~~a~~ EITHER OF THE FOLLOWING:

1 (A) A person who has been released from liability ~~pursuant~~  
2 ~~to~~ UNDER section 2925d. ~~Except as otherwise provided in sub~~  
3 ~~section (7), a~~

4 (B) A DEFENDANT WHOSE FAULT AS DETERMINED UNDER SUBSECTION  
5 (1) IS EQUAL TO OR LESS THAN THE PLAINTIFF'S.

6 (4) A person shall not be required to pay damages in an  
7 amount greater than his or her percentage of fault AS FOUND UNDER  
8 SUBSECTION (1).

9 (5) ~~(6)~~ In an action alleging medical malpractice, the  
10 court shall reduce an award of damages in excess of 1 of the lim-  
11 itations set forth in section 1483 to the amount of the appropri-  
12 ate limitation set forth in section 1483. The jury shall not be  
13 advised by the court or by counsel for either party of the limi-  
14 tations set forth in section 1483 or any other provision of sec-  
15 tion 1483.

16 ~~(7) Except as otherwise provided in this subsection and~~  
17 ~~subsection (8), upon motion made not later than 6 months after a~~  
18 ~~final judgment is entered, the court shall determine whether all~~  
19 ~~or part of a party's share of the obligation is uncollectible~~  
20 ~~from that party, and shall reallocate any uncollectible amount~~  
21 ~~among the other parties according to their respective percentages~~  
22 ~~of fault as determined under subsection (1). A party shall not~~  
23 ~~be required to pay a percentage of any uncollectible amount that~~  
24 ~~exceeds that party's percentage of fault as determined under sub~~  
25 ~~section (1). The party whose liability is reallocated continues~~  
26 ~~to be subject to contribution and to any continuing liability to~~  
27 ~~the plaintiff on the judgment.~~



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

6 (6) AS USED IN THIS SECTION, "FAULT" INCLUDES AN ACT, AN  
7 OMISSION, CONDUCT, A BREACH OF WARRANTY, OR A BREACH OF A LEGAL  
8 DUTY, OR ANY CONDUCT THAT COULD GIVE RISE TO THE IMPOSITION OF  
9 STRICT LIABILITY, THAT IS A PROXIMATE CAUSE OF DAMAGE SUSTAINED  
10 BY A PARTY.

11 Section 2. (1) Section 1629 of Act No. 236 of the Public  
12 Acts of 1961, being section 600.1629 of the Michigan Compiled  
13 Laws, as amended by this amendatory act, and section 2956 of Act  
14 No. 236 of the Public Acts of 1961, being section 600.2956 of the  
15 Michigan Compiled Laws, as added by this amendatory act, apply to  
16 actions filed after the expiration of 90 days after the effective  
17 date of this amendatory act.

18 (2) Sections 2945, 2946, 2947, 2948, 2949, 5805, and 6304 of  
19 Act No. 236 of the Public Acts of 1961, being sections 600.2945,  
20 600.2946, 600.2947, 600.2948, 600.2949, 600.5805, and 600.6304,  
21 as amended by this amendatory act, and sections 2946a, 2955, and  
22 2957 of Act No. 236 of the Public Acts of 1961, being sections  
23 600.2946a, 600.2955, and 600.2957, as added by this amendatory  
24 act, apply to trials in which the jury is sworn in after the  
25 expiration of 90 days after the effective date of this amendatory  
26 act.