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BILL ANALYSIS



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Senate Bill 1115 (as introduced 5-3-12)
Sponsor: Senator Roger Kahn, M.D.
Committee: Insurance

Date Completed: 5-22-12

CONTENT

The bill would amend the Revised Judicature Act to establish requirements for the entry of judgments in medical malpractice actions. The proposed requirements include the following:

- **Past and future economic damages, and future health care costs, would have to be reduced by collateral source payments.**
- **Past and future noneconomic damages would have to be reduced by the Act's limits on total noneconomic loss recoverable in medical malpractice actions.**
- **Future damages and costs would have to be reduced to gross present cash value.**
- **The total judgment amount would have to be reduced by the amount of all settlements paid by all joint tortfeasors, and by the percentage of the plaintiff's fault.**
- **When reducing past and future noneconomic damages or the total judgment amount, the court would have to calculate the ratio of past to future damages and allocate the amounts to be deducted proportionately.**

The bill also would expand the definition of "noneconomic loss".

Entry of Judgment

Section 6306 of the Act requires the court to enter an order of judgment after a verdict is rendered in favor of a plaintiff by a trier of fact (the judge or jury), and prescribes the order and the amounts in which the order of judgment must be entered. Under the bill, Section 6306 would apply when a verdict was rendered in favor of a plaintiff in a personal injury action other than an action for medical malpractice.

The bill would add Section 6306a to govern the entry of an order of judgment after a trier of fact rendered a verdict in favor of a plaintiff in a medical malpractice action. Subject to Section 2959 (which requires the court to reduce damages by the percentage of comparative fault of the person who died or was injured), the order of judgment would have to be entered against each defendant, including a third-party defendant, in the following order and in the following amounts:

- All past economic damages, less collateral source payments as provided in Section 6303.
- All past noneconomic damages, reduced subject to the limitations on noneconomic damages in Section 1483.
- All future economic damages, less medical and other health care costs, and less collateral source payments determined to be collectible under Section 6303, reduced to gross present cash value.

- All future medical and other health care costs, less collateral source payments determined to be collectible under Section 6303, reduced to gross present cash value.
- All future noneconomic damages reduced to gross present cash value and reduced subject to the limitations in Section 1483.
- All taxable and allowable costs, including interest as permitted on the judgment amounts.

(Under Section 6303, in a personal injury action in which the plaintiff seeks to recover for certain expenses or other economic loss, the court must reduce the portion of the judgment that represents damages paid or payable by a collateral source, including benefits from an insurance policy, employee benefits, social security benefits, worker's compensation benefits, and Medicare benefits. Benefits from a collateral source may not be considered payable unless the court determines that there is a previously existing contractual or statutory obligation on the part of the collateral source to pay the benefits.)

When reducing past or future noneconomic damages as required by Section 1483 (described below), the court would have to calculate the ratio of past noneconomic damages to future noneconomic damages and allocate the amounts to be deducted proportionately between the past and future noneconomic damages.

If the plaintiff were assigned a percentage of fault under Section 6304, the total judgment amount would have to be reduced, subject to Section 2959, by the percentage of the plaintiff's fault. When reducing a judgment amount under this provision, the court would have to determine the ratio of total past damages to total future damages and allocate the amounts to be deducted proportionately between the past and future damages. (Under Section 6304, in an action seeking damages for personal injury, property damage, or wrongful death involving fault of more than one party, the court or the jury must make findings as to the total amount of each plaintiff's damages and the percentage of the total fault of all people who contributed to the death or injury, including each plaintiff and each person released from liability.)

The total judgment amount determined under proposed Section 6306a would have to be reduced by the amount of all settlements paid by all joint tortfeasors, including those who were not parties to the action and those who were not licensed health care professionals, licensed health care facilities or agencies, or employees or agents of licensed facilities or agencies. When reducing a judgment amount under this provision, the court would have to calculate the ratio of total past damages to total future damages awarded by the trier of fact and allocate the amounts to be deducted proportionately between the past and future damages. The court would have to perform the required reduction before awarding any interest permitted by law, but after making all other required adjustments to the verdict, including those required by Sections 6306a and 1483.

As used in Section 6306a, the bill would define "gross present cash value" as the total amount of future damages reduced to present value at a rate of 5% per year, compounded annually, for each year in which the damages will accrue, as found by the trier of fact under Section 6305(1)(b). (That section requires a verdict or judgment rendered by a trier of fact in a personal injury action to include specific findings of any future damages and the periods over which they will accrue, on an annual basis, for the following types of future damages: medical and other costs of health care; lost wages or earnings or lost earning capacity and other economic loss; and noneconomic loss.)

Noneconomic Loss

Section 1483 of the Act sets a limit of \$280,000 on the total amount of damages for noneconomic loss recoverable by all plaintiffs resulting from the negligence of all defendants in a medical malpractice action, unless one or more of the exceptions specified in the Act

apply. If any exceptions apply, the limit is \$500,000. (These amounts must be adjusted each year to reflect changes in the consumer price index.)

As used in these provisions, "noneconomic loss" means damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, or other noneconomic loss. The bill also would include loss of household or other services, loss of society and companionship, and loss of consortium.

MCL 600.1483 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor

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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.