

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Kahn, Meekhof, Moolenaar and Smith

ENROLLED SENATE BILL No. 1115

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending sections 1483, 2959, 6306, and 6307 (MCL 600.1483, 600.2959, 600.6306, and 600.6307), section 1483 as amended by 1993 PA 78, section 2959 as added and section 6306 as amended by 1995 PA 161, and section 6307 as added by 1986 PA 178, and by adding section 6306a.

The People of the State of Michigan enact:

Sec. 1483. (1) In a claim for damages alleging medical malpractice by or against a person or party, the total amount of damages for noneconomic loss recoverable by all plaintiffs, resulting from the medical malpractice of all defendants, shall not exceed \$280,000.00 unless, as the result of the negligence of 1 or more of the defendants, 1 or more of the following exceptions apply as determined by the court pursuant to section 6304, in which case damages for noneconomic loss shall not exceed \$500,000.00:

(a) The plaintiff is hemiplegic, paraplegic, or quadriplegic resulting in a total permanent functional loss of 1 or more limbs caused by 1 or more of the following:

(i) Injury to the brain.

(ii) Injury to the spinal cord.

(b) The plaintiff has permanently impaired cognitive capacity rendering him or her incapable of making independent, responsible life decisions and permanently incapable of independently performing the activities of normal, daily living.

(c) There has been permanent loss of or damage to a reproductive organ resulting in the inability to procreate.

(2) In awarding damages in an action alleging medical malpractice, the trier of fact shall itemize damages into damages for economic loss and damages for noneconomic loss.

(3) As used in this section, "noneconomic loss" means damages or loss due to pain, suffering, inconvenience, physical impairment, or physical disfigurement, loss of society and companionship, whether claimed under section 2922 or otherwise, loss of consortium, or other noneconomic loss.

(4) Beginning April 1, 1994, the state treasurer shall adjust the limitations on damages for noneconomic loss set forth in subsection (1) by amounts determined by the state treasurer at the end of each calendar year to reflect the cumulative annual percentage change in the consumer price index. As used in this subsection, "consumer price index" means the most comprehensive index of consumer prices available for this state from the bureau of labor statistics of the United States department of labor.

Sec. 2959. In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the court shall reduce the damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in section 6306 or 6306a, as applicable. If that person's percentage of fault is greater than the aggregate fault of the other person or persons, whether or not parties to the action, the court shall reduce economic damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in section 6306 or 6306a, as applicable, and noneconomic damages shall not be awarded.

Sec. 6306. (1) After a verdict is rendered by a trier of fact in favor of a plaintiff in a personal injury action other than an action for medical malpractice, an order of judgment shall be entered by the court. Subject to section 2959, the order of judgment shall be entered against each defendant, including a third-party defendant, in the following order and in the following judgment amounts:

- (a) All past economic damages, less collateral source payments as provided for in section 6303.
 - (b) All past noneconomic damages.
 - (c) All future economic damages, less medical and other health care costs and less collateral source payments determined to be collectible under section 6303(5), reduced to gross present cash value.
 - (d) All future medical and other health care costs reduced to gross present cash value.
 - (e) All future noneconomic damages reduced to gross present cash value.
 - (f) All taxable and allowable costs, including interest as permitted by section 6013 or 6455 on the judgment amounts.
- (2) As used in this section, "gross present cash value" means the total amount of future damages reduced to present value at a rate of 5% per year, compounded annually, for each year in which those damages will accrue, as found by the trier of fact under section 6305(1)(b).

(3) If the plaintiff was assigned a percentage of fault under section 6304, the total judgment amount shall be reduced, subject to section 2959, by an amount equal to the percentage of plaintiff's fault. When reducing the judgment amount as provided in this subsection, the court shall determine the ratio of total past damages to total future damages and shall allocate the amounts to be deducted proportionally between the past and future damages.

Sec. 6306a. (1) After a verdict is rendered by a trier of fact in favor of a plaintiff in a medical malpractice action, an order of judgment shall be entered by the court. Subject to section 2959, the order of judgment shall be entered against each defendant, including a third-party defendant, in the following order and in the following amounts:

- (a) All past economic damages, less collateral source payments as provided in section 6303.
 - (b) All past noneconomic damages, reduced subject to the limitations in section 1483. When reducing past noneconomic damages as required by section 1483, the court shall calculate the ratio of past noneconomic damages to future noneconomic damages and shall allocate the amounts to be deducted proportionally between the past and future noneconomic damages.
 - (c) 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.
 - (d) All future medical and other health care costs, reduced to gross present cash value.
 - (e) All future noneconomic damages reduced to gross present cash value and reduced subject to the limitations in section 1483. When reducing future noneconomic damages as required by section 1483, the court shall calculate the ratio of past noneconomic damages to future noneconomic damages and shall allocate the amounts to be deducted proportionally between the past and future noneconomic damages.
 - (f) All taxable and allowable costs, including interest as permitted by section 6013 or 6455 on the judgment amounts.
- (2) If the plaintiff was assigned a percentage of fault under section 6304, the total judgment amount as determined under this section shall be reduced, subject to section 2959, by the percentage of plaintiff's fault. When reducing a judgment amount under this subsection, the court shall determine the ratio of total past damages to total future damages and allocate the amounts to be deducted proportionally between the past and future damages.

(3) If liability is determined to be joint and several, the total judgment amount determined under this section shall be reduced by the amount of all settlements paid by all joint tortfeasors, including joint tortfeasors who were not parties to the action and joint tortfeasors who are not persons described in section 5838a(1). When reducing a judgment amount under this subsection, the court shall calculate the ratio of total past damages to total future damages awarded by the trier of fact and shall allocate the amounts to be deducted proportionally between the past and future damages. When reducing a judgment amount under this subsection, the court shall perform the reduction before awarding any interest permitted by law, but after making all other required adjustments to the verdict, including those required by this section and by section 1483.

(4) As used in this section, "gross present cash value" means 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).

Sec. 6307. In an action alleging personal injury, if the amount of future damages, as described in section 6306(1)(c) and (e) or 6306a(1)(c) and (e), as applicable, in the judgment exceeds \$250,000.00 gross present cash value, as determined under section 6306 or 6306a, as applicable, the court shall enter an order that the defendant or the defendant's liability insurance carrier shall satisfy that amount of the judgment, less all costs and attorney fees the plaintiff is obligated to pay, by the purchase of an annuity contract, if all of the following requirements are met:

(a) The purchase price of the annuity contract is equal to 100% of the future damages subject to this section, less an amount determined by multiplying the amount of those damages by a percentage equal to the rate of prejudgment interest as calculated under section 6013(8) or section 6455(2) on the date the trial was commenced.

(b) The annuity contract is purchased from a life insurer authorized to issue annuity contracts under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

Enacting section 1. Sections 1483, 2959, 6306, and 6307 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1483, 600.2959, 600.6306, and 600.6307, as amended by this amendatory act and section 6306a of the revised judicature act of 1961, 1961 PA 236, MCL 600.6306a, as added by this amendatory act apply only to actions in which the cause of action arose on or after the effective date of this amendatory act.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor