



# SENATE BILL No. 354

March 1, 1995, Introduced by Senators STILLE, NORTH, SHUGARS, GAST, GOUGEON, ROGERS, STEIL, EMMONS, MC MANUS and BENNETT and referred to the Committee on Judiciary.

A bill to amend sections 2925d, 6303, 6304, and 6306 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 6303 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 600.2925d, 600.6303, 600.6304, and 600.6306 of the Michigan Compiled Laws; and to add section 6302.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2925d, 6303, 6304, and 6306 of Act  
2 No. 236 of the Public Acts of 1961, sections 6303 and 6306 as  
3 added by Act No. 178 of the Public Acts of 1986 and section 6304  
4 as amended by Act No. 78 of the Public Acts of 1993, being sec-  
5 tions 600.2925d, 600.6303, 600.6304, and 600.6306 of the Michigan

1 Compiled Laws, are amended and section 6302 is added to read as  
2 follows:

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

7       (a) It does not discharge any of the other tort-feasors from  
8 liability for the injury or wrongful death unless its terms so  
9 provide.

10       (b) ~~It~~ EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 6304 AND  
11 6306, IT reduces the claim against the other tort-feasors to the  
12 extent of any amount stipulated by the release or the covenant or  
13 to the extent of the amount of the consideration paid for it,  
14 whichever amount is the greater.

15       (c) It discharges the tort-feasor to whom it is given from  
16 all liability for contribution to any other tort-feasor.

17       SEC. 6302. IF A PROVISION OF THIS CHAPTER CONFLICTS WITH A  
18 PROVISION OF ACT NO. 170 OF THE PUBLIC ACTS OF 1964, BEING SEC-  
19 TIONS 691.1401 TO 691.1415 OF THE MICHIGAN COMPILED LAWS, THE  
20 PROVISION IN ACT NO. 170 OF THE PUBLIC ACTS OF 1964 CONTROLS.

21       Sec. 6303. (1) In a personal injury action in which the  
22 plaintiff seeks to recover for the expense of medical care, reha-  
23 bilitation services, loss of earnings, loss of earning capacity,  
24 or other economic loss, evidence to establish that the expense or  
25 loss was paid or is payable, in whole or in part, by a collateral  
26 source ~~shall be~~ IS admissible ~~to~~ IN the court in which the  
27 action was brought after a verdict for the plaintiff and before a

1 judgment is entered on the verdict. Subject to subsection (5),  
2 if the court determines that all or part of the plaintiff's  
3 expense or loss ~~has been~~ WAS paid or is payable by a collateral  
4 source, the court shall reduce that portion of the judgment  
5 ~~which~~ THAT represents damages paid or payable by a collateral  
6 source by an amount equal to the sum determined pursuant to sub-  
7 section (2). This reduction shall not exceed the amount of the  
8 ~~judgment~~ VERDICT for economic loss or that portion of the ver-  
9 dict ~~which~~ THAT represents damages paid or payable by a collat-  
10 eral source.

11 (2) The court shall determine the amount of the plaintiff's  
12 expense or loss ~~which has been~~ THAT WAS paid or is payable by a  
13 collateral source. Except for premiums on insurance ~~which~~ THAT  
14 is required by law, that amount shall then be reduced by a sum  
15 equal to the premiums, or that portion of the premiums, paid for  
16 the particular benefit by the plaintiff or the plaintiff's family  
17 or incurred by the plaintiff's employer on behalf of the plain-  
18 tiff in securing the benefits received or receivable from the  
19 collateral source.

20 (3) Within 10 days after a verdict for the plaintiff,  
21 plaintiff's attorney shall send notice of the verdict by regis-  
22 tered mail to all persons entitled by contract to a lien against  
23 the proceeds of plaintiff's recovery. If a contractual lien  
24 holder does not exercise the lien holder's right of subrogation  
25 within 20 days after receipt of the notice of the verdict, the  
26 lien holder ~~shall lose~~ LOSES the right of subrogation. This  
27 subsection ~~shall~~ only ~~apply~~ APPLIES to contracts executed or

1 renewed ~~on or after the effective date of this section~~  
2 SEPTEMBER 30, 1986.

3 (4) As used in this section, "collateral source" means bene-  
4 fits received or receivable from an insurance policy; benefits  
5 payable ~~pursuant to~~ UNDER a contract with a health care corpo-  
6 ration, dental care corporation, or health maintenance organiza-  
7 tion; employee benefits; social security benefits; worker's com-  
8 pensation benefits; or medicare benefits. ~~Collateral~~ EXCEPT AS  
9 OTHERWISE PROVIDED IN THIS SUBSECTION, COLLATERAL source does not  
10 include life insurance benefits or benefits paid by a person,  
11 partnership, association, corporation, or other legal entity  
12 entitled by law to a lien against the proceeds of a recovery by a  
13 plaintiff in a civil action for damages. ~~Collateral~~ EXCEPT AS  
14 OTHERWISE PROVIDED IN THIS SUBSECTION, COLLATERAL source does not  
15 include benefits paid or payable by a person, partnership, asso-  
16 ciation, corporation, or other legal entity entitled by contract  
17 to a lien against the proceeds of a recovery by a plaintiff in a  
18 civil action for damages, if the contractual lien has been exer-  
19 cised pursuant to subsection (3). IN AN ACTION UNDER SECTION 2  
20 OF ACT NO. 170 OF THE PUBLIC ACTS OF 1964, BEING SECTION 691.1402  
21 OF THE MICHIGAN COMPILED LAWS, COLLATERAL SOURCE INCLUDES BENE-  
22 FITS PAID OR PAYABLE BY A PERSON, PARTNERSHIP, ASSOCIATION, COR-  
23 PORATION, OR OTHER LEGAL ENTITY ENTITLED BY LAW OR CONTRACT TO A  
24 LIEN AGAINST THE PROCEEDS OF A RECOVERY BY A PLAINTIFF IN A CIVIL  
25 ACTION FOR DAMAGES.

26 (5) For purposes of this section, benefits from a collateral  
27 source shall not be considered payable or receivable unless the

1 court makes a determination that there is a previously existing  
2 contractual or statutory obligation on the part of the collateral  
3 source to pay the benefits.

4 Sec. 6304. (1) In a personal injury action involving fault  
5 of more than 1 ~~party to the action, including third party~~  
6 ~~defendants, the court, unless otherwise agreed by all parties to~~  
7 ~~the action,~~ PERSON, INCLUDING, BUT NOT LIMITED TO, PLAINTIFFS,  
8 DEFENDANTS, THIRD-PARTY DEFENDANTS, AND PERSONS RELEASED FROM  
9 LIABILITY UNDER SECTION 2925D, THE COURT shall instruct the jury  
10 to answer special interrogatories or, if there is no jury, shall  
11 make findings indicating both of the following:

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

13 (b) The percentage of the total fault ~~of all of the~~  
14 ~~parties~~ regarding each claim ~~as to~~ THAT IS ATTRIBUTABLE TO  
15 EACH PERSON CONTRIBUTING TO THE INJURIES, INCLUDING, BUT NOT  
16 LIMITED TO, each plaintiff, defendant, ~~and~~ third-party  
17 defendant, AND PERSON RELEASED FROM LIABILITY UNDER SECTION  
18 2925D.

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

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

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

1           (3) ~~(5)~~ The court shall determine the award of damages to  
2 each plaintiff in accordance with the findings under subsection  
3 (1). ~~, subject to any reduction under subsection (6) or section~~  
4 ~~2925d or 6303, and enter judgment against each party, including a~~  
5 ~~third party defendant, except that~~ A judgment shall not be  
6 entered against a person who has been released from liability  
7 ~~pursuant to~~ AS PROVIDED IN section 2925d.

8           (4) Except as otherwise provided in THIS SUBSECTION AND sub-  
9 section (7), a person shall not be required to pay damages in an  
10 amount greater than ~~his or her~~ THAT PERSON'S percentage of  
11 fault. THIS SUBSECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

12           (A) A PRODUCTS LIABILITY ACTION.

13           (B) DAMAGES AWARDED AGAINST A GOVERNMENTAL HOSPITAL OR MEDI-  
14 CAL CARE FACILITY.

15           (C) IF NO FAULT IS ATTRIBUTED TO THE PLAINTIFF UNDER SUBSEC-  
16 TION (1), DAMAGES AWARDED AGAINST A NONGOVERNMENTAL PERSON.

17           (5) IN THE INSTANCES EXEMPTED UNDER SUBSECTION (4), LIABIL-  
18 ITY IS JOINT AND SEVERAL, SUBJECT TO REDUCTION UNDER SECTIONS  
19 2925D AND 6303.

20           (6) In an action alleging medical malpractice, the court  
21 shall reduce an award of damages in excess of ~~+~~~~of the~~ limita-  
22 tions set forth in section 1483 to the amount of the appropriate  
23 limitation set forth in section 1483. The jury shall not be  
24 advised by the court or by counsel for either party of the limi-  
25 tations set forth in section 1483 or any other provision of sec-  
26 tion 1483.

1 (7) Except as otherwise provided in this subsection and  
2 subsection ~~(8)~~ (5), upon motion made not later than 6 months  
3 after a final judgment is entered, the court shall determine  
4 whether all or part of a party's share of the obligation is  
5 uncollectible from that party, and shall reallocate ~~any~~ THE  
6 uncollectible amount among the other parties according to their  
7 respective percentages of fault as determined under subsection  
8 (1). IF A PLAINTIFF SETTLES WITH A PERSON FOR AN AMOUNT THAT IS  
9 LESS THAN THE AMOUNT ALLOCATED TO THE PERSON BASED ON THE PERCENTAGE  
10 OF FAULT ATTRIBUTED TO THAT PERSON UNDER SUBSECTION (1), THE  
11 AMOUNT ALLOCATED TO THAT PERSON THAT EXCEEDS THE SETTLEMENT  
12 AMOUNT SHALL NOT BE CONSIDERED UNCOLLECTIBLE FOR THE PURPOSES OF  
13 THIS SUBSECTION. A party shall not be required to pay a percentage  
14 of ~~any~~ AN uncollectible amount that exceeds that party's  
15 percentage of fault as determined under subsection (1). A PARTY  
16 SHALL NOT BE REQUIRED TO PAY AN AMOUNT ALLOCATED UNDER THIS SUBSECTION  
17 THAT, WHEN ADDED TO THE AMOUNT FOR WHICH THE PARTY IS  
18 ALREADY LIABLE, EXCEEDS A LIMITATION ON A RECOVERY AGAINST THAT  
19 PARTY AS PROVIDED IN THIS OR ANOTHER ACT. THE AMOUNT ALLOCATED TO  
20 A PERSON THAT EXCEEDS A LIMITATION ON A RECOVERY AGAINST THAT  
21 PERSON AS PROVIDED IN THIS OR ANOTHER ACT SHALL NOT BE CONSIDERED  
22 UNCOLLECTIBLE FOR THE PURPOSES OF THIS SUBSECTION. The party  
23 whose liability is reallocated continues to be subject to contribution  
24 and to any continuing liability to the plaintiff on the  
25 judgment.

26 ~~(8) Notwithstanding subsection (3), a governmental agency,~~  
27 ~~other than a governmental hospital or medical care facility, is~~

~~1 not required to pay a percentage of any uncollectible amount that  
2 exceeds the governmental agency's percentage of fault as deter-  
3 mined under subsection (1).~~

4       Sec. 6306. (1) After a verdict rendered by a trier of fact  
5 in favor of a plaintiff, an order of judgment shall be entered by  
6 the court. The order of judgment shall be entered against each  
7 defendant, including a third-party defendant. ~~7 in the following  
8 order and in the following judgment amounts~~ SUBJECT TO THE  
9 REDUCTIONS PROVIDED BY SUBSECTIONS (3) AND (4), THE AMOUNT OF THE  
10 VERDICT SHALL BE DIVIDED AMONG THE FOLLOWING CATEGORIES AS  
11 APPROPRIATE:

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

14       (b) All past noneconomic damages.

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

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

21       (e) All future noneconomic damages reduced to gross present  
22 cash value.

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

25       (2) As used in this section, "gross present cash value"  
26 means the total amount of future damages reduced to present value  
27 at a rate of 5% per year COMPOUNDED ANNUALLY for each year in

1 which those damages accrue, as found by the trier of fact  
2 pursuant to section 6305(1)(b).

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

8 (3) ~~(4)~~ If the plaintiff was assigned a percentage of  
9 fault pursuant to section 6304, the ~~total judgment amount~~  
10 VERDICT shall be reduced ~~, as provided in subsection (5),~~ by an  
11 amount equal to the percentage of plaintiff's fault. ~~(5)~~ When  
12 reducing the ~~judgment amount as provided in subsections (3) and~~  
13 ~~(4)~~ VERDICT UNDER THIS SUBSECTION, the court shall determine the  
14 ratio of total past damages to total future damages and shall  
15 allocate the amounts to be deducted proportionally between the  
16 past and future damages.

17 (4) AFTER THE REDUCTION UNDER SUBSECTION (3), IF ANY, THE  
18 VERDICT SHALL BE REDUCED BY THE AMOUNT OF A SETTLEMENT BETWEEN  
19 THE PLAINTIFF AND A PERSON RELEASED FROM LIABILITY UNDER SECTION  
20 2925D TO THE EXTENT THAT THE SETTLEMENT AMOUNT EXCEEDS THE AMOUNT  
21 ALLOCATED TO THE RELEASED PERSON BASED ON THE PERCENTAGE OF FAULT  
22 ATTRIBUTED TO THAT PERSON UNDER SECTION 6304. IF MORE THAN 1  
23 PERSON SETTLES AND IS RELEASED FROM LIABILITY UNDER SECTION  
24 2925D, THE VERDICT SHALL BE REDUCED BY THE AGGREGATE OF THE SET-  
25 TLEMENT AMOUNTS TO THE EXTENT THAT THE AGGREGATED SETTLEMENT  
26 AMOUNTS EXCEED THE AGGREGATE OF THE AMOUNTS ALLOCATED TO THOSE

1 PERSONS BASED ON THE PERCENTAGES OF FAULT ATTRIBUTED TO THOSE  
2 PERSONS UNDER SECTION 6304.

3       (5) IF MORE THAN 1 PARTY IS LIABLE FOR THE JUDGMENT, EACH  
4 PARTY SHALL PAY THE PORTION OF THE VERDICT AFTER THE REDUCTIONS  
5 UNDER THIS SECTION EQUAL TO THE PERCENTAGE OF FAULT ATTRIBUTED TO  
6 THE PARTY UNDER SECTION 6304. EXCEPT AS PROVIDED IN SECTION  
7 6304, A PARTY SHALL NOT PAY MORE THAN THE AMOUNT ALLOCATED BASED  
8 ON THE PERCENTAGE OF FAULT ATTRIBUTED TO THE PARTY UNDER SECTION  
9 6304.