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SFA**BILL ANALYSIS**

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Senate Bill 163 (as introduced 2-12-97)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 10-21-97

CONTENT

The bill would amend the Revised Judicature Act to do all of the following:

- Limit the noneconomic damages recoverable against a governmental agency for bodily injury or property damage that resulted from the negligent operation of an "emergency vehicle", unless the injury or damage resulted from the agency's gross negligence.
- Provide that a person who sustained bodily injury or property damage arising during his or her violation of fleeing and eluding laws could not recover damages for the injury or property damage.
- List issues that would be questions of law that could be decided upon by the court.

"Emergency vehicle" would mean a motor vehicle owned or operated by a law enforcement agency while the vehicle was being used to provide emergency services for the law enforcement agency.

The bill is tie-barred to three bills that have not yet been introduced.

Liability Limitation

The total amount of damages for noneconomic loss recoverable by each plaintiff against a governmental agency for bodily injury or property damage resulting from the negligent operation of an emergency vehicle could not exceed \$1 million. The State Treasurer would have to adjust the limitation at the end of each calendar year to reflect the cumulative change in the consumer price index. In awarding damages, the trier of fact (the jury or, in the absence of a jury, the judge) would have to itemize the amount of damages awarded for economic loss and the amount of damages awarded for noneconomic loss. The bill specifies that noneconomic loss would not include the value of homemaking services or the care of dependent family members.

The limit on noneconomic damages would apply if each of the following conditions were met:

- At the time of the occurrence that resulted in the injury or damage, the agency had in effect an emergency vehicle operation policy pursuant to a proposed "Model Emergency Vehicle Operation Policy Act".
- At the time of the occurrence, the emergency vehicle was engaged in an "emergency operation" (which would be defined with reference to the model Act).
- The operator of the emergency vehicle was certified by the agency as meeting the minimum requirements established for emergency vehicle operators under the proposed model Act, and that certification was in effect at the time of the occurrence that resulted in the bodily injury or

property damage.

- During the occurrence, the operator was in substantial compliance with the emergency vehicle operation policy adopted by the governmental agency.

A jury could not be advised by the court or by counsel of the limitation on noneconomic damages, and the court would have to reduce an award of damages in excess of \$1 million or the revised liability limit as adjusted by the Treasurer.

The limitation on noneconomic damages would not apply if the trier of fact determined that the bodily injury or property damage resulted from a governmental agency's gross negligence. "Gross negligence" would be defined as it is in the governmental immunity Act, i.e., "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results".

Fleeing and Eluding

An individual who sustained bodily injury or property damage arising from an emergency operation while he or she was violating either the Michigan Penal Code's or Michigan Vehicle Code's prohibition against fleeing and eluding a police or conservation officer, could not recover monetary damages from any person for that injury or property damage. ("Person" would include an individual, association, firm, partnership, corporation, unit of government, governmental agency, or any other legal entity.)

Questions of Law

The bill specifies that all of the following issues would be questions of law and could be decided by the court upon the motion of a party at any time before entry of judgment:

- Whether, at the time of the occurrence that resulted in the bodily injury or property damage, the agency had in effect an emergency vehicle operation policy certified pursuant to the proposed model Act.
- Whether, at the time of the occurrence, the emergency vehicle was engaged in emergency operation.
- Whether, at the time of the occurrence, the emergency vehicle operator was certified by the governmental agency as meeting minimum requirements established for emergency vehicle operators under the proposed model Act.
- Whether, at the time of the occurrence, the emergency vehicle operator was in substantial compliance with the emergency vehicle operation policy adopted by the governmental agency.
- Whether the bodily injury or property damage resulted from a governmental agency's gross negligence.
- Whether the bodily injury or property damage sustained by a person who violated fleeing and eluding laws arose from his or her violation.

Governmental Agency

For purposes of the bill, "governmental agency" would be defined as it is in the governmental immunity Act, and would include an employee or agent of a governmental agency, acting within the scope of his or her employment or agency.

In an action against two or more governmental agencies, the total amount of damages for noneconomic loss recoverable by each plaintiff against all of the agencies could not exceed the total amount permitted under the bill.

FISCAL IMPACT

The bill would result in indeterminate savings to governmental agencies to the extent that future damages exceeded limits contained in the bill.

The Michigan Municipal League Liability Pool reports that over the past six years there were 11 payouts involving pursuit cases totaling \$4,004,000. That liability pool includes 670 members that have emergency vehicles.

The Michigan Municipal Risk Management Authority reports that from July 1988 through June 1993, 17 deaths and nine serious injuries arising from 22 police chases resulted in \$17.8 million in payments to date. The Authority includes approximately 280 members that have emergency vehicles.

These two organizations do not include the City of Detroit, Wayne County, Oakland County, or Macomb County.

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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.