



# SENATE BILL No. 1041

March 2, 1994 Introduced by Senators VAN REGENMORTER,  
BOUCHARD and BERRYMAN and referred to the Committee  
on Judiciary

A bill to amend section 6304 of Act No 236 of the Public  
Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

as amended by Act No 78 of the Public Acts of 1993 being sec-  
tion 600 6304 of the Michigan Compiled Laws and to add section  
1484

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 6304 of Act No 236 of the Public Acts  
2 of 1961, as amended by Act No 78 of the Public Acts of 1993,  
3 being section 600 6304 of the Michigan Compiled Laws, is amended  
4 and section 1484 is added to read as follows

5 SEC 1484 (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND  
6 (3), THE TOTAL AMOUNT OF DAMAGES RECOVERABLE BY EACH PLAINTIFF  
7 AGAINST A GOVERNMENTAL AGENCY FOR BODILY INJURY OR PROPERTY  
8 DAMAGE RESULTING FROM THE NEGLIGENT OPERATION OF AN EMERGENCY

1 VEHICLE SHALL NOT EXCEED \$280,000 00 IN NONECONOMIC DAMAGES IF  
2 EACH OF THE FOLLOWING CONDITIONS IS MET

3 (A) THE ACTION AGAINST THE GOVERNMENTAL AGENCY IS PERMITTED  
4 UNDER SECTION 5 OF ACT NO 170 OF THE PUBLIC ACTS OF 1964, BEING  
5 SECTION 691 1405 OF THE MICHIGAN COMPILED LAWS

6 (B) AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE  
7 BODILY INJURY OR PROPERTY DAMAGE, THE GOVERNMENTAL AGENCY HAD IN  
8 EFFECT AN EMERGENCY VEHICLE OPERATION POLICY CERTIFIED PURSUANT  
9 TO THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT

10 (C) AT THE TIME OF THE OCCURRENCE THAT RESULTED IN THE  
11 BODILY INJURY OR PROPERTY DAMAGE, THE EMERGENCY VEHICLE WAS  
12 ENGAGED IN EMERGENCY OPERATION

13 (D) THE EMERGENCY VEHICLE OPERATOR WAS CERTIFIED BY THE GOV-  
14 ERNMENTAL AGENCY AS MEETING THE MINIMUM REQUIREMENTS ESTABLISHED  
15 FOR EMERGENCY VEHICLE OPERATORS UNDER THE MODEL EMERGENCY VEHICLE  
16 OPERATION POLICY ACT, AND THAT CERTIFICATION WAS IN EFFECT AT THE  
17 TIME OF THE OCCURRENCE DESCRIBED IN SUBDIVISIONS (B) AND (C)

18 (2) AN INDIVIDUAL WHO SUSTAINS BODILY INJURY OR PROPERTY  
19 DAMAGE ARISING FROM THAT INDIVIDUAL'S VIOLATION OF SECTION 479A  
20 OF THE MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF  
21 1931, BEING SECTION 750 479A OF THE MICHIGAN COMPILED LAWS, OR  
22 SECTION 602A OF THE MICHIGAN VEHICLE CODE, ACT NO 300 OF THE  
23 PUBLIC ACTS OF 1949, BEING SECTION 257 602A OF THE MICHIGAN  
24 COMPILED LAWS, SHALL NOT RECOVER FROM ANY PERSON MONEY DAMAGES  
25 FOR THAT BODILY INJURY OR PROPERTY DAMAGE, UNLESS HE OR SHE  
26 ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE INJURY OR  
27 DAMAGE WAS CAUSED BY THE PERSON'S INTENTIONAL TORT AS USED IN

1 THIS SUBSECTION, "PERSON" INCLUDES AN INDIVIDUAL, ASSOCIATION,  
2 FIRM, PARTNERSHIP, CORPORATION, UNIT OF GOVERNMENT, GOVERNMENTAL  
3 AGENCY, OR ANY OTHER LEGAL ENTITY

4 (3) THE LIABILITY LIMITATIONS PRESCRIBED BY SUBSECTION (1)  
5 DO NOT APPLY TO A GOVERNMENTAL AGENCY'S GROSS NEGLIGENCE THE  
6 ISSUE OF WHETHER NEGLIGENCE OCCURRED, AND THE ISSUE OF WHETHER  
7 GROSS NEGLIGENCE OCCURRED, ARE QUESTIONS OF FACT HOWEVER, ALL  
8 OF THE FOLLOWING ISSUES ARE QUESTIONS OF LAW AND MAY BE DECIDED  
9 BY THE COURT UPON THE MOTION OF A PARTY AT ANY TIME BEFORE ENTRY  
10 OF JUDGMENT

11 (A) WHETHER THE ACTION AGAINST THE GOVERNMENTAL AGENCY IS  
12 PERMITTED UNDER SECTION 5 OF ACT NO 170 OF THE PUBLIC ACTS OF  
13 1964, BEING SECTION 691 1405 OF THE MICHIGAN COMPILED LAWS

14 (B) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN  
15 THE BODILY INJURY OR PROPERTY DAMAGE, THE GOVERNMENTAL AGENCY HAD  
16 IN EFFECT AN EMERGENCY VEHICLE OPERATION POLICY CERTIFIED PURSU-  
17 ANT TO THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT

18 (C) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN  
19 THE BODILY INJURY OR PROPERTY DAMAGE THE EMERGENCY VEHICLE WAS  
20 ENGAGED IN EMERGENCY OPERATION

21 (D) WHETHER, AT THE TIME OF THE OCCURRENCE THAT RESULTED IN  
22 BODILY INJURY OR PROPERTY DAMAGE, THE EMERGENCY VEHICLE OPERATOR  
23 WAS CERTIFIED BY THE GOVERNMENTAL AGENCY AS MEETING MINIMUM  
24 REQUIREMENTS ESTABLISHED FOR EMERGENCY VEHICLE OPERATORS UNDER  
25 THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT

1 (E) WHETHER THE BODILY INJURY OR PROPERTY DAMAGE SUSTAINED  
2 BY THE PERSON DESCRIBED IN SUBSECTION (2) AROSE FROM THE PERSON'S  
3 VIOLATION OF A LAW IDENTIFIED IN SUBSECTION (2)

4 (4) THE TOTAL AMOUNT OF DAMAGES AWARDED AGAINST 2 OR MORE  
5 GOVERNMENTAL AGENCIES IN AN ACTION DESCRIBED IN SUBSECTION (1)  
6 SHALL NOT EXCEED THE TOTAL AMOUNT PERMITTED UNDER SUBSECTION (1)  
7 IF BOTH OF THE FOLLOWING OCCUR

8 (A) THE CONDITIONS DESCRIBED IN SUBSECTION (1) ARE MET

9 (B) THE GOVERNMENTAL AGENCIES ARE DETERMINED AT TRIAL TO  
10 HAVE BEEN ACTING IN COMPLIANCE WITH A SINGLE POLICY OR SEPARATE  
11 POLICIES CERTIFIED UNDER THE MODEL EMERGENCY VEHICLE OPERATION  
12 POLICY ACT

13 (5) AS USED IN THIS SECTION

14 (A) "EMERGENCY OPERATION" MEANS THAT TERM AS DEFINED IN  
15 SECTION 2 OF THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT

16 (B) "EMERGENCY VEHICLE" MEANS THAT TERM AS DEFINED IN  
17 SECTION 2 OF THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT

18 (C) "GOVERNMENTAL AGENCY" MEANS THAT TERM AS DEFINED IN  
19 SECTION 1 OF ACT NO 170 OF THE PUBLIC ACTS OF 1964, BEING  
20 SECTION 691 1401 OF THE MICHIGAN COMPILED LAWS, AND INCLUDES ALL  
21 OF THE FOLLOWING

22 (1) A COMBINATION OF 2 OR MORE GOVERNMENTAL AGENCIES ACTING  
23 UNDER A SINGLE EMERGENCY VEHICLE OPERATION POLICY CERTIFIED UNDER  
24 THE MODEL EMERGENCY VEHICLE OPERATION POLICY ACT

25 (11) A GOVERNMENTAL AGENCY THAT IS IN COMPLIANCE WITH AN  
26 EMERGENCY VEHICLE OPERATION POLICY CERTIFIED UNDER THE MODEL  
27 EMERGENCY VEHICLE OPERATION POLICY ACT, REGARDLESS OF WHETHER

1 THAT GOVERNMENTAL AGENCY IS ACTING IN CONCERT WITH 1 OR MORE  
2 OTHER AGENCIES THAT ARE OPERATING WITHOUT A POLICY OR PURSUANT TO  
3 SEPARATE POLICIES

4 (111) AN EMPLOYEE OR AGENT OF A GOVERNMENTAL AGENCY, ACTING  
5 WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT OR AGENCY

6 Sec 6304 (1) In a personal injury action involving fault  
7 of more than 1 party to the action, including third-party  
8 defendants, the court, unless otherwise agreed by all parties to  
9 the action, shall instruct the jury to answer special interroga-  
10 tories or, if there is no jury, shall make findings indicating  
11 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 parties  
14 regarding each claim as to each plaintiff defendant, and  
15 third-party defendant

16 (2) In determining the percentages of fault under subsection  
17 (1)(b), the trier of fact shall consider both the nature of the  
18 conduct of each party at fault and the extent of the causal rela-  
19 tion between the conduct and the damages claimed

20 (3) If it is determined under subsections (1) and (2) that a  
21 plaintiff is not at fault subsections (5) and ~~-(6)-~~ (8) do not  
22 apply

23 (4) Subsections (5) and ~~-(6)-~~ (8) do not apply to a products  
24 liability action, as defined in section 2945

25 (5) The court shall determine the award of damages to each  
26 plaintiff in accordance with the findings under subsection (1),  
27 subject to any reduction under subsection (6) OR (7), or

1 section 2925d or 6303, and enter judgment against each party,  
2 including a third-party defendant, except that judgment shall not  
3 be entered against a person who has been released from liability  
4 pursuant to section 2925d Except as otherwise provided in sub-  
5 section ~~-(7)-~~ (8), a person shall not be required to pay damages  
6 in an amount greater than his or her percentage of fault

7 (6) In an action alleging medical malpractice, the court  
8 shall reduce an award of damages in excess of 1 of the limita-  
9 tions set forth in section 1483 to the amount of the appropriate  
10 limitation set forth in section 1483 The jury shall not be  
11 advised by the court or by counsel for either party of the limi-  
12 tations set forth in section 1483 or any other provision of sec-  
13 tion 1483 THIS SUBSECTION DOES NOT APPLY UNTIL AFTER THE EXPI-  
14 RATION OF 90 DAYS AFTER THE 87TH LEGISLATURE ADJOURNS SINE DIE  
15 DURING 1993

16 (7) THE COURT SHALL REDUCE AN AWARD OF DAMAGES IN EXCESS OF  
17 THE LIMITATION SET FORTH IN SECTION 1484 THE JURY SHALL NOT BE  
18 ADVISED BY THE COURT OR BY COUNSEL FOR EITHER PARTY OF THE LIMI-  
19 TATION SET FORTH IN SECTION 1484

20 (8) ~~-(7)-~~ Except as otherwise provided in this subsection  
21 and subsection ~~-(8)-~~ (9), upon motion made not later than 6  
22 months after a final judgment is entered, the court shall deter-  
23 mine whether all or part of a party's share of the obligation is  
24 uncollectible from that party, and shall reallocate any uncol-  
25 lectible amount among the other parties according to their  
26 respective percentages of fault as determined under subsection  
27 (1) A party shall not be required to pay a percentage of any

1 uncollectible amount that exceeds that party's percentage of  
 2 fault as determined under subsection (1) The party whose  
 3 liability is reallocated continues to be subject to contribution  
 4 and to any continuing liability to the plaintiff on the  
 5 judgment

6 (9) ~~-(8)-~~ Notwithstanding subsection ~~-(3)-~~ (8), a governmen-  
 7 tal agency, other than a governmental hospital or medical care  
 8 facility, is not required to pay a percentage of any uncollecti-  
 9 ble amount that exceeds the governmental agency's percentage of  
 10 fault as determined under subsection (1)

11 Section 2 This amendatory act shall not take effect unless  
 12 all of the following bills of the 87th Legislature are enacted  
 13 into law

14 (a) Senate Bill No \_\_\_\_\_ or House Bill No \_\_\_\_\_ (request  
 15 no 00188'93 \*\*\*)

16 (b) Senate Bill No 1042