

---

**SUMMARY OF MICHIGAN TORT REFORM**

---

Prepared by: Michael Schmidt  
Nathan Peplinski  
HARVEY KRUSE, P.C.  
1050 Wilshire Dr., Ste. 320  
Troy, MI 48084  
(248) 649-7800  
Fax (248) 649-2316

## **I. Tort Reform**

1. Venue in a tort or similar action is appropriate in the county “where the original injury occurred” and the defendant resides or has its office. If no county satisfies this, venue is appropriate where the original injury occurred and where the plaintiff resides or has its office. If no county satisfies either, the statute provides further guidance on selecting the appropriate county. MCL 600.1629.

2. In a tort action, the court must act as a gatekeeper for scientific expert opinions. MCL 600.2955(1).

3. A novel methodology or form of scientific evidence may be admitted into evidence only if its proponent establishes that it has achieved general scientific acceptance among impartial and disinterested experts in the field. MCL 600.2955(2).

4. It is an absolute defense if the plaintiff was more than 50% at fault due to intoxication or use of controlled substances. MCL 600.2955a.

5. Generally, joint and several liability for tort actions has been replaced with several liability. This means that a person cannot generally not be held liable for damages in an amount greater than his or her percentage of fault. MCL 600.2956; MCL 600.6304(4).

6. Joint and several liability remains for medical malpractice and tort actions based on certain crimes. MCL 600.6304(6); MCL 600.6312.

7. The trier of fact shall allocate fault in a tort action in direct proportion to the person's percentage of fault. The trier of fact shall consider the fault of each person, regardless of whether the person is, or could have been, named as a party to the action. MCL 600.2957(1); MCL 600.6304(1)(b).

8. MCR 2.112(K) requires that notice be given before fault can be allocated to a nonparty at fault.

9. A plaintiff's contributory fault does not bar that plaintiff's recovery of damages in a tort action. MCL 600.2958.

10. A plaintiff's damages in a tort action are reduced by his or her percentage of fault in a tort action. MCL 600.2959.

11. MCL 600.2962 controls causes of actions against certified public accountants.

12. If the plaintiff's percentage of fault is greater than 50%, he or she is not entitled to noneconomic damages. The economic damages are reduced by the percentage of fault. MCL 600.2959.

13. Pursuant to MCL 600.6304, in a tort or similar action involving the fault of more than one person, including third-party defendants or nonparties at fault, unless otherwise agreed to by all parties, the finder of fact must make findings regarding: (a) The total amount of each plaintiff's damages and (b) The percentage of the total fault of all persons that contributed to the death or injury, including each plaintiff and each person released from liability, regardless of whether the person was or could have been named as a party to the action. In determining the percentages of fault, the trier of fact must consider both the nature of the conduct of each person at fault and the extent of the causal relation between the conduct and the claimed damages.

14. Pursuant to MCL 600.6304(3), after the trier of fact determines each party's percentage of fault, the Court must determine the award of damages to each plaintiff, subject to any possible reductions, and shall enter judgment against each party, including a third-party defendant, except that judgment shall not be entered against a person who has been released from liability.

15. Pursuant to MCL 600.6306, after a verdict rendered by a trier of fact in favor of a plaintiff, the court must enter an order of judgment. Generally the order of judgment must be entered against each defendant, including a third-party defendant, in the following order: (a) All past economic damages, less collateral source payments as provided for in MCL 600.6303; (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 MCL 600.6303(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.

If the plaintiff was assigned a percentage of fault, the total judgment amount must be reduced<sup>1</sup> 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.

## **II. Product Liability Reform**

1. For product liability purposes, a defendant is considered to conduct business in a county in which the defendant's product is sold at retail. MCL 600.1629(3).

2. A product liability action can now include marketing, selling, advertising, packaging, or labeling a product. MCL 600.2945.

3. Evidence of nongovernmental standards in existence at the time the product is sold or made are admissible in a product liability case. MCL 600.2946(1).

4. The plaintiff must establish that the product was not reasonably safe and that a technically feasible alternative production practice was available that would have prevented the harm without significantly impairing the usefulness or desirability of the product and that would not have created equal or greater risk of harm to others. MCL 600.2946(2).

5. There is a rebuttable presumption of no liability if the product met state or federal laws or regulations at the time of manufacture/sale. MCL 600.2946(4).

6. No cause of action exists for product liability regarding a drug if the drug was approved by the FDA and met FDA labeling standards. MCL 600.2946(5).

7. MCL 600.2946a sets a cap on noneconomic damages for product liability claims. The amount is adjusted by the state treasurer. The current cap is \$410,800 unless the defect caused death or permanent loss of a vital bodily function, then the cap is raised to \$733,500. The cap does not apply to death or permanent loss of vital bodily function cases if there is gross negligence or if MCL 600.2949a applies. If the trier of fact cannot readily ascertain the economic loss, the trier of fact must use the median family income, which for 2009 is \$66,768.

---

<sup>1</sup> This is subject to MCL 600.2959, which prevents the recovery of noneconomic damages if the plaintiff is more than 50% at fault.

8. A manufacturer or seller is not responsible for alteration or misuse of a product unless the alternation or misuse is reasonably foreseeable. This is a question of law. MCL 600.2947.

9. A manufacturer or seller is not liable in a product liability action if the purchaser or user of the product was aware that use of the product created an unreasonable risk of personal injury and voluntarily exposed himself or herself to that risk. MCL 600.2947(3).

10. A manufacturer or seller is not liable for a failure to provide adequate warning to a sophisticated user unless the warning is required by state or federal law. MCL 600.2947(4).

11. A manufacturer or seller is not liable if the alleged harm was caused by an inherent characteristic of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability. MCL 600.2947(5).

12. A seller other than a manufacturer is not liable unless he or she failed to exercise reasonable care with respect to the product and that failure was a proximate cause of the person's injuries or he or she gave an express warranty regarding the product and the failure to conform to that warranty was the cause of the person's harm. MCL 600.2947(6).

13. Evidence is admissible that written warnings were provided that gave notice to foreseeable users of the material risk or that provided instructions as to the foreseeable uses, applications, or limitations of the product. MCL 600.2948(1).

14. A defendant is not liable for a risk in a product that should be obvious or should be common knowledge. MCL 600.2948(2).

15. A manufacturer is not liable for a failure to warn unless it is shown that it knew or should have known about the risk of harm based on the scientific, technical, or medical information reasonably available at the time. MCL 600.2948(3).

16. MCL 600.2946(4), MCL 600.2946a, MCL 600.2947(1), MCL 600.2947(4), and MCL 600.2948(2) do not apply if the defendant willfully disregarded the knowledge of the defect and that the defect would cause the harm. MCL 600.2949a.

### **III. No Fault/Third Party Motor Vehicle Liability Reform**

1. Generally, the issue of whether a person suffers a serious impairment is a question of law. MCL 500.3135(2).

2. Damages under the no fault act are determined based on comparative fault. But a plaintiff that is more than 50% at fault cannot recover. MCL 500.3135(2)(b).

3. A person operating his or her vehicle without insurance is not entitled to recovery. MCL 500.3135(2)(c).

4. A “serious impairment of body function” means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life. MCL 500.3135(7).