

HOUSE BILL No. 5993

June 30, 1992, Introduced by Rep. Bennane and referred to the Committee on Judiciary.

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

"Revised judicature act of 1961,"

as amended, being sections 600.101 to 600.9947 of the Michigan Compiled Laws, by adding section 2912f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 236 of the Public Acts of 1961, as
2 amended, being sections 600.101 to 600.9947 of the Michigan
3 Compiled Laws, is amended by adding section 2912f to read as
4 follows:

5 SEC. 2912F. (1) IN AN ACTION ALLEGING MEDICAL MALPRACTICE,
6 THE COURT SHALL NOT ENTER AN ORDER OR JUDGMENT THAT HAS THE PUR-
7 POSE OR EFFECT OF DOING ANY OF THE FOLLOWING:

1 (A) PROHIBITING ACCESS TO, OR CONCEALING INFORMATION
2 CONTAINED IN, A RECORD MAINTAINED BY THE COURT CONCERNING THE
3 ACTION BY A MEMBER OF THE PUBLIC.

4 (B) PROHIBITING A PARTY TO THE ACTION OR THE PARTY'S ATTOR-
5 NEY FROM PROVIDING ANY INFORMATION CONCERNING THE ACTION, WHETHER
6 OR NOT THE INFORMATION WAS OBTAINED THROUGH DISCOVERY IN THE
7 ACTION, TO ANY PERSON.

8 (C) PROHIBITING A PARTY TO THE ACTION OR THE PARTY'S ATTOR-
9 NEY FROM VOLUNTARILY PROVIDING INFORMATION CONCERNING A SETTLE-
10 MENT AGREEMENT CONCERNING THE ACTION TO ANY PERSON.

11 (D) PROHIBITING ACCESS TO OR CONCEALING ANY OF THE
12 FOLLOWING:

13 (i) THE NAME OF THE JUDGE OF THE COURT WHO PRESIDED OVER THE
14 ACTION.

15 (ii) THE NAMES OF THE PARTIES TO THE ACTION.

16 (iii) THE NAMES OF THE ATTORNEYS WHO REPRESENTED THE PARTIES
17 TO THE ACTION.

18 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), IF THE
19 PLAINTIFF IN AN ACTION ALLEGING MEDICAL MALPRACTICE ENTERS INTO A
20 SETTLEMENT AGREEMENT WITH A DEFENDANT CONCERNING THE ACTION, THE
21 PLAINTIFF'S ATTORNEY OR, IF THE PLAINTIFF IS NOT REPRESENTED BY
22 AN ATTORNEY, THE PLAINTIFF SHALL FILE A COMPLETE WRITTEN COPY OF
23 THE SETTLEMENT AGREEMENT IN THE COURT FILE.

24 (3) TO PROTECT THE RIGHT TO PRIVACY OF A PLAINTIFF IN AN
25 ACTION ALLEGING MEDICAL MALPRACTICE, SPECIFIC MEDICAL INFORMATION
26 CONCERNING THE PLAINTIFF SHALL BE EXCLUDED FROM A COPY OF A
27 SETTLEMENT AGREEMENT THAT IS FILED IN THE COURT FILE UNDER

1 SUBSECTION (2) AS PROVIDED IN THIS SUBSECTION. A HEARING ON A
2 MOTION FILED UNDER THIS SUBSECTION SHALL BE IN CAMERA. UPON
3 MOTION BY THE PLAINTIFF, THE COURT SHALL ENTER AN ORDER TO ALLOW
4 THE PLAINTIFF TO EXCLUDE SPECIFIC MEDICAL INFORMATION CONCERNING
5 THE PLAINTIFF FROM THE COPY OF THE SETTLEMENT AGREEMENT THAT IS
6 FILED IN THE COURT FILE IF THE COURT DETERMINES ALL OF THE
7 FOLLOWING:

8 (A) THERE IS A SPECIFIC, SERIOUS, AND SUBSTANTIAL INTEREST
9 IN LIMITING PUBLIC DISCLOSURE OF THE INFORMATION.

10 (B) THE INFORMATION IS OF A PERSONAL NATURE AND PUBLIC DIS-
11 CLOSURE OF THE INFORMATION WOULD CONSTITUTE A CLEARLY UNWARRANTED
12 INVASION OF THE PLAINTIFF'S PRIVACY.

13 (C) THE INTEREST IN LIMITING PUBLIC DISCLOSURE TO THE INFOR-
14 MATION CLEARLY OUTWEIGHTS A PRESUMPTION OF ALLOWING PUBLIC DIS-
15 CLOSURE OF THE INFORMATION AND ANY ADVERSE EFFECT THAT LIMITING
16 PUBLIC DISCLOSURE OF THE INFORMATION MIGHT HAVE ON ANOTHER
17 PERSON'S SAFETY OR HEALTH.

18 (D) THERE IS NOT A LESS RESTRICTIVE MEANS AVAILABLE THAT
19 WILL ADEQUATELY AND EFFECTIVELY PROTECT THE PRIVACY INTEREST
20 ASSERTED BY THE PLAINTIFF.

21 (4) ANY PORTION OF AN AGREEMENT OR CONTRACT THAT RESULTS
22 FROM A SETTLEMENT AGREEMENT OF AN ACTION ALLEGING MEDICAL MAL-
23 PRACTICE AND THAT HAS THE PURPOSE OR EFFECT OF PROHIBITING A
24 PARTY TO THE ACTION OR THE PARTY'S ATTORNEY FROM PROVIDING ANY
25 INFORMATION CONCERNING THE ACTION TO ANY PERSON, WHETHER OR NOT
26 THE INFORMATION WAS OBTAINED THROUGH DISCOVERY IN THE ACTION, IS
27 VOID, CONTRARY TO PUBLIC POLICY, AND IS NOT ENFORCEABLE.

1 (5) ANY AFFECTED PERSON, INCLUDING, BUT NOT LIMITED TO, A
2 REPRESENTATIVE OF THE NEWS MEDIA, HAS STANDING TO CONTEST AN
3 ORDER, JUDGMENT, AGREEMENT, OR CONTRACT THAT VIOLATES THIS
4 SECTION. A PERSON MAY CONTEST AN ORDER, JUDGMENT, AGREEMENT, OR
5 CONTRACT THAT VIOLATES THIS SECTION BY MOTION IN THE COURT THAT
6 ENTERED THE ORDER OR JUDGMENT, OR BY BRINGING A DECLARATORY JUDG-
7 MENT ACTION AS PROVIDED BY LAW.

8 (6) THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

9 (A) RECORDS OR INFORMATION SPECIFICALLY DESCRIBED AND EXEMPT
10 FROM DISCLOSURE BY STATUTE.

11 (B) RECORDS OR INFORMATION SPECIFICALLY DESCRIBED AND EXEMPT
12 FROM DISCLOSURE BY A PROTECTIVE COURT ORDER CONCERNING A TRADE
13 SECRET OR OTHER CONFIDENTIAL RESEARCH, DEVELOPMENT, OR COMMERCIAL
14 INFORMATION.