

SENATE BILL No. 41

February 5, 1991, Introduced by Senators N. SMITH and
POSTHUMUS and referred to the Committee on Commerce.

A bill to amend sections 5040 and 5043 of Act No. 236 of the
Public Acts of 1961, entitled as amended
"Revised judicature act of 1961,"
being sections 600.5040 and 600.5043 of the Michigan Compiled
Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5040 and 5043 of Act No. 236 of the
2 Public Acts of 1961, being sections 600.5040 and 600.5043 of the
3 Michigan Compiled Laws, are amended to read as follows:

4 Sec. 5040. (1) ~~The provisions of this~~ THIS chapter ~~shall~~
5 ~~be applicable~~ APPLIES to the arbitration of a dispute, contro-
6 versy, or issue arising out of or resulting from injury to, or
7 the death of, a person caused by an error, omission, or
8 negligence in the performance of professional services by a
9 health care provider, hospital, or their agent, or based on a

1 claimed performance of such services without consent, in breach
2 of warranty, or in violation of contract.

3 (2) As used in this chapter:

4 (a) "Association" means the American arbitration association
5 or other entity organized to arbitrate disputes pursuant to this
6 chapter.

7 (b) "Health care provider" means a person, partnership, or
8 corporation lawfully engaged in the practice of medicine, sur-
9 gery, dentistry, podiatry, optometry, chiropractic, OR nursing,
10 ~~or~~ a person dispensing drugs or medicines, OR A HEALTH MAINTE-
11 NANCE ORGANIZATION.

12 (c) "Hospital" means a person, partnership, or corporation
13 lawfully engaged in the operation of a hospital, clinic, ~~health~~
14 ~~maintenance organization,~~ or ~~a~~ sanitarium.

15 Sec. 5043. (1) In a proceeding pursuant to this chapter:

16 (a) The parties may be represented by counsel, be heard,
17 present evidence material to the controversy, and cross-examine
18 any witness.

19 (b) The prevailing standard of duty, practice, or care
20 applicable in a civil action ~~shall be~~ IS the standard TO BE
21 applied in the arbitration.

22 (c) Damages or remedial care ~~shall be~~ ARE without limita-
23 tion as to nature or amount unless otherwise provided by law.

24 (2) A PROCEEDING PURSUANT TO THIS CHAPTER IS SUBJECT TO THE
25 SAME PERIOD OF LIMITATIONS AS AN ACTION INVOLVING A CLAIM BASED
26 ON MEDICAL MALPRACTICE UNDER SECTION 5838A.

1 (3) ~~—(2)—~~ A party may appear without counsel and shall be
2 advised of ~~—such—~~ THAT right and the right to retain counsel in a
3 manner calculated to inform the person of the nature and complex-
4 ity of a proceeding by a simple concise form to be distributed by
5 the association administering the arbitration.

6 Section 2. This amendatory act shall not take effect unless
7 Senate Bill No. ____ or House Bill No. ____ (request
8 no. 00415'91) of the 86th Legislature is enacted into law.