



HOUSE BILL No. 4490

March 11, 1993, Introduced by Reps. Bennane, Wallace, Harrison, Dobronski, Kilpatrick, Scott, Schroer, Murphy, Stallworth, DeMars, Gubow, Jondahl, Gire and Richard A. Young and referred to the Committee on Judiciary.

A bill to amend sections 1483, 2912a, 5040, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," section 1483 as added by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2912a, 600.5040, 600.5856, and 600.6013 of the Michigan Compiled Laws; to add sections 2912f and 2912g; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1483, 2912a, 5040, 5856, and 6013 of
2 Act No. 236 of the Public Acts of 1961, section 1483 as added by
3 Act No. 178 of the Public Acts of 1986 and section 6013 as
4 amended by Act No. 50 of the Public Acts of 1987, being sections
5 600.1483, 600.2912a, 600.5040, 600.5856, and 600.6013 of the

1 Michigan Compiled Laws, are amended and sections 2912f and 2912g
2 are added to read as follows:

3 Sec. 1483. (1) In an action for damages alleging medical
4 malpractice BY OR against a person or party, ~~specified in sec-~~
5 ~~tion 5838a,~~ damages for noneconomic loss ~~which exceeds~~
6 ~~\$225,000.00 shall not be awarded unless 1 or more of the follow-~~
7 ~~ing circumstances exist:~~

8 ~~(a) There has been a death.~~

9 ~~(b) There has been an intentional tort.~~

10 ~~(c) A foreign object was wrongfully left in the body of the~~
11 ~~patient.~~

12 ~~(d) The injury involves the reproductive system of the~~
13 ~~patient.~~

14 ~~(e) The discovery of the existence of the claim was pre-~~
15 ~~vented by the fraudulent conduct of a health care provider.~~

16 ~~(f) A limb or organ of the patient was wrongfully removed.~~

17 ~~(g) The patient has lost a vital bodily function.~~ SHALL NOT
18 EXCEED \$350,000.00 UNLESS 1 OR MORE OF THE FOLLOWING EXCEPTIONS
19 APPLY, IN WHICH CASE DAMAGES FOR NONECONOMIC LOSS SHALL NOT
20 EXCEED \$1,000,000.00:

21 (A) THERE HAS BEEN A DEATH OR THERE IS A DIMINISHED PROGNO-
22 SIS INDICATING THAT DEATH IS LIKELY TO OCCUR BEFORE NORMAL LIFE
23 EXPECTANCY.

24 (B) THE PLAINTIFF HAS A PERMANENT DISABILITY RESULTING FROM
25 1 OR MORE OF THE FOLLOWING:

26 (i) BLINDNESS CAUSED BY THE INJURY.

1 (ii) DEAFNESS CAUSED BY THE INJURY.

2 (iii) LOSS OF LIMB.

3 (iv) INJURY TO THE BRAIN.

4 (v) INJURY TO THE SPINAL CORD.

5 (vi) INJURY TO THE CARDIOVASCULAR SYSTEM.

6 (C) THERE HAS BEEN PERMANENT LOSS OF OR DAMAGE TO A REPRO-
7 DUCTIVE ORGAN.

8 (D) THERE HAS BEEN ALTERATION, DESTRUCTION, OR FALSIFICATION
9 OF A MEDICAL RECORD OR CHART IN VIOLATION OF SECTION 492A OF THE
10 MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,
11 BEING SECTION 750.492A OF THE MICHIGAN COMPILED LAWS.

12 (2) In awarding damages in an action alleging medical mal-
13 practice, the trier of fact shall itemize damages into DAMAGES
14 FOR economic LOSS and ~~noneconomic~~ damages FOR NONECONOMIC
15 LOSS.

16 (3) IF DAMAGES FOR ECONOMIC LOSS IN AN ACTION ALLEGING MEDI-
17 CAL MALPRACTICE CANNOT READILY BE ASCERTAINED BY THE TRIER OF
18 FACT, THE TRIER OF FACT SHALL CALCULATE DAMAGES FOR ECONOMIC LOSS
19 BASED ON AN AMOUNT THAT IS EQUAL TO THE STATE AVERAGE MEDIAN
20 FAMILY INCOME AS REPORTED IN THE IMMEDIATELY PRECEDING FEDERAL
21 DECENNIAL CENSUS AND ADJUSTED AND CERTIFIED BY THE STATE
22 TREASURER.

23 (4) IN A JURY TRIAL IN AN ACTION ALLEGING MEDICAL MALPRAC-
24 TICE, ANY PARTY MAY ADVISE THE JURY OF ITS POSITION OR CONTEN-
25 TIONS WITH RESPECT TO THE LIMITATION ON DAMAGES FOR NONECONOMIC
26 LOSS SET FORTH IN SUBSECTION (1) INCLUDING, BUT NOT LIMITED TO,
27 THE AMOUNT OF THE APPLICABLE LIMITATION.

1 (5) ~~(3) "Noneconomic"~~ AS USED IN THIS SECTION, "NONECONOMIC
 2 loss" means damages or loss due to pain, suffering, inconve-
 3 nience, physical impairment, physical disfigurement, or other
 4 noneconomic loss.

5 (6) ~~(4)~~ The STATE TREASURER SHALL ADJUST THE limitation on
 6 ~~noneconomic~~ damages FOR NONECONOMIC LOSS set forth in subsec-
 7 tion (1) ~~shall be increased~~ by an amount determined by the
 8 state treasurer at the end of each calendar year to reflect the
 9 cumulative annual percentage ~~increase~~ CHANGE in the consumer
 10 price index. As used in this subsection, "consumer price index"
 11 means the most comprehensive index of consumer prices available
 12 for this state from the bureau of labor statistics of the United
 13 States department of labor.

14 Sec. 2912a. In an action alleging malpractice, the plain-
 15 tiff ~~shall have~~ HAS the burden of proving that in light of the
 16 state of the art existing at the time of the alleged
 17 malpractice:

18 (a) The defendant, if a general practitioner, failed to pro-
 19 vide the plaintiff the recognized standard of acceptable profes-
 20 sional practice OR CARE in the community in which the defendant
 21 practices or in a similar community, and that as a proximate
 22 result of the defendant failing to provide that standard, the
 23 plaintiff suffered an injury.

24 (b) The defendant, if a specialist OR A GRADUATE OF A RECOG-
 25 NIZED RESIDENCY TRAINING PROGRAM, failed to provide the recog-
 26 nized standard of PRACTICE OR care within that specialty as
 27 reasonably applied in light of the facilities available in the

1 community or other facilities reasonably available under the
2 circumstances, and as a proximate result of the defendant failing
3 to provide that standard, the plaintiff suffered an injury.

4 SEC. 2912F. (1) THE SOLE PURPOSE OF THIS SECTION IS TO PRO-
5 MOTE SETTLEMENT AND AMICABLE RESOLUTION OF MEDICAL MALPRACTICE
6 CLAIMS WITHOUT THE NEED FOR COMMENCING FORMAL LITIGATION; TO
7 REDUCE THE COST OF MEDICAL MALPRACTICE LITIGATION IN GENERAL; AND
8 TO PROVIDE COMPENSATION FOR MERITORIOUS MEDICAL MALPRACTICE
9 CLAIMS THAT WOULD OTHERWISE BE PRECLUDED FROM RECOVERY BECAUSE OF
10 THE EXCESSIVE COSTS OF LITIGATION.

11 (2) A PERSON SHALL NOT COMMENCE AN ACTION ALLEGING MEDICAL
12 MALPRACTICE AGAINST A HEALTH PROFESSIONAL OR HEALTH FACILITY
13 UNLESS THE PERSON HAS GIVEN THE HEALTH PROFESSIONAL OR HEALTH
14 FACILITY WRITTEN NOTICE UNDER THIS SECTION NOT LESS THAN 180 DAYS
15 BEFORE THE ACTION IS COMMENCED.

16 (3) THE NOTICE OF INTENT TO FILE A CLAIM REQUIRED UNDER SUB-
17 SECTION (2) SHALL BE MAILED TO THE LAST KNOWN PROFESSIONAL BUSI-
18 NESS ADDRESS OR RESIDENTIAL ADDRESS OF THE HEALTH PROFESSIONAL OR
19 HEALTH FACILITY WHO IS THE SUBJECT OF THE CLAIM. PROOF OF THE
20 MAILING CONSTITUTES PRIMA FACIE EVIDENCE OF COMPLIANCE WITH THIS
21 SECTION. IF NO LAST KNOWN PROFESSIONAL BUSINESS OR RESIDENTIAL
22 ADDRESS CAN REASONABLY BE ASCERTAINED, NOTICE MAY BE MAILED TO
23 THE HEALTH FACILITY WHERE THE CARE THAT IS THE BASIS FOR THE
24 CLAIM WAS RENDERED.

25 (4) IF THE IDENTITY OF THE HEALTH PROFESSIONAL OR HEALTH
26 FACILITY TO WHOM NOTICE MUST BE GIVEN UNDER SUBSECTION (2) CANNOT
27 BE REASONABLY ASCERTAINED, THE NOTICE MAY BE MAILED TO THE HEALTH

1 FACILITY WHERE THE CARE THAT IS THE BASIS FOR THE CLAIM WAS
2 RENDERED, SO LONG AS A REASONABLE ATTEMPT IS MADE IN THE NOTICE
3 TO DESCRIBE THE PERSON OR PERSONS FOR WHOM THE NOTICE IS
4 INTENDED.

5 (5) A NOTICE GIVEN IN COMPLIANCE WITH THIS SECTION CONSTI-
6 TUTES NOTICE TO A HEALTH CARE PROFESSIONAL, WHETHER LICENSED OR
7 NOT, A LICENSED HEALTH FACILITY OR AGENCY, OR AN EMPLOYEE OR
8 AGENT OF A LICENSED HEALTH FACILITY OR AGENCY WHO MAY BE JOINED
9 AS A PARTY DEFENDANT AFTER THE ACTION ALLEGING MEDICAL MALPRAC-
10 TICE IS COMMENCED.

11 (6) THE NOTICE GIVEN TO A HEALTH PROFESSIONAL OR HEALTH
12 FACILITY UNDER THIS SECTION SHALL CONTAIN A STATEMENT OF AT LEAST
13 ALL OF THE FOLLOWING:

14 (A) THE FACTUAL BASIS FOR THE CLAIM.

15 (B) THE APPLICABLE STANDARD OF PRACTICE OR CARE ALLEGED BY
16 THE CLAIMANT.

17 (C) THE MANNER IN WHICH IT IS CLAIMED THAT THE APPLICABLE
18 STANDARD OF PRACTICE OR CARE WAS BREACHED BY THE HEALTH PROFES-
19 SIONAL OR HEALTH FACILITY.

20 (D) THE ALLEGED ACTION THAT SHOULD HAVE BEEN TAKEN TO
21 ACHIEVE COMPLIANCE WITH THE ALLEGED STANDARD OF PRACTICE OR
22 CARE.

23 (E) THE MANNER IN WHICH IT IS ALLEGED THE BREACH OF THE
24 STANDARD OF PRACTICE OR CARE WAS THE PROXIMATE CAUSE OF THE
25 INJURY CLAIMED IN THE NOTICE.

26 (7) AFTER THE INITIAL NOTICE IS GIVEN TO A HEALTH
27 PROFESSIONAL OR HEALTH FACILITY UNDER THIS SECTION, THE TACKING

1 OR ADDITION OF SUCCESSIVE 180-DAY PERIODS IS NOT ALLOWED,
2 IRRESPECTIVE OF HOW MANY ADDITIONAL NOTICES ARE SUBSEQUENTLY
3 FILED FOR THAT CLAIM AND IRRESPECTIVE OF THE NUMBER OF HEALTH
4 PROFESSIONALS OR HEALTH FACILITIES NOTIFIED.

5 (8) AFTER NOTICE HAS BEEN GIVEN IN COMPLIANCE WITH THIS SEC-
6 TION AND AN ACTION ALLEGING MEDICAL MALPRACTICE IS COMMENCED,
7 THIS SECTION DOES NOT APPLY TO THE ACTION AND DOES NOT PREVENT
8 THE ADDITION OF PARTIES DEFENDANT TO THE ACTION. THE NOTICE
9 REQUIREMENT OF THIS SECTION DOES NOT REQUIRE THE SPLITTING OF A
10 CAUSE OF ACTION AND SHALL NOT INTERFERE WITH THE ORDERLY ADMINIS-
11 TRATION OF JUSTICE.

12 (9) A COMPLAINT OR AMENDMENT OF A COMPLAINT FILED AFTER
13 NOTICE HAS BEEN GIVEN IN COMPLIANCE WITH THIS SECTION SHALL NOT
14 BE DISALLOWED OR STRICKEN ON THE BASIS THAT IT CONTAINS ALLEGA-
15 TIONS, THEORIES, CLAIMS, OR BREACHES OF THE STANDARD OF PRACTICE
16 OR CARE NOT OTHERWISE CONTAINED IN THE NOTICE.

17 (10) IF DURING THE 180-DAY NOTICE PERIOD REQUIRED UNDER SUB-
18 SECTION (2), A STATUTE OF LIMITATIONS OR REPOSE OTHERWISE WOULD
19 HAVE BECOME APPLICABLE AS A BAR TO THE CLAIM BUT FOR THE NOTICE
20 FILED UNDER THIS SECTION, AS PROVIDED UNDER SECTION 5856(D), THEN
21 THE CLAIMANT SHALL FILE A COMPLAINT NO LATER THAN 180 DAYS AFTER
22 THE EXPIRATION OF THE 180-DAY NOTICE PERIOD REQUIRED UNDER SUB-
23 SECTION (2).

24 (11) WITHIN 60 DAYS AFTER RECEIPT OF NOTICE UNDER THIS SEC-
25 TION, THE HEALTH PROFESSIONAL OR HEALTH FACILITY AGAINST WHOM THE
26 CLAIM IS MADE SHALL FURNISH TO THE CLAIMANT OR HIS OR HER

1 AUTHORIZED REPRESENTATIVE A WRITTEN RESPONSE THAT CONTAINS A
2 STATEMENT OF EACH OF THE FOLLOWING:

3 (A) THE FACTUAL BASIS FOR THE DEFENSE TO THE CLAIM.

4 (B) THE STANDARD OF PRACTICE OR CARE THAT THE HEALTH PROFES-
5 SIONAL OR HEALTH FACILITY CLAIMS TO BE APPLICABLE TO THE ACTION
6 AND THAT THE HEALTH PROFESSIONAL OR HEALTH FACILITY COMPLIED WITH
7 THAT STANDARD.

8 (C) THE MANNER IN WHICH IT IS CLAIMED BY THE HEALTH PROFES-
9 SIONAL OR HEALTH FACILITY THAT THERE WAS COMPLIANCE WITH THE
10 APPLICABLE STANDARD OF PRACTICE OR CARE.

11 (D) THE MANNER IN WHICH THE HEALTH PROFESSIONAL OR HEALTH
12 FACILITY CONTENDS THAT THE ALLEGED INJURY OR ALLEGED DAMAGE TO
13 THE CLAIMANT IS NOT RELATED TO THE CARE AND TREATMENT RENDERED.

14 (12) A COURT SHALL NOT DISMISS A CAUSE OF ACTION ALLEGING
15 MEDICAL MALPRACTICE BASED ON THE PLAINTIFF'S FAILURE TO COMPLY
16 WITH THE 180-DAY REQUIREMENT OF SUBSECTION (2), UNLESS THE
17 DEFENDANT CAN DEMONSTRATE ACTUAL PREJUDICE.

18 SEC. 2912G. (1) SUBJECT TO SUBSECTION (2), DURING THE
19 180-DAY PERIOD BETWEEN THE TIME NOTICE IS MAILED UNDER SECTION
20 2912F AND THE COMMENCEMENT OF AN ACTION ALLEGING MEDICAL MALPRAC-
21 TICE, IF THE TOTAL AMOUNT OF DAMAGES CLAIMED IS \$75,000.00 OR
22 LESS, INCLUDING INTEREST AND COSTS, ALL CLAIMANTS AND ALL HEALTH
23 PROFESSIONALS OR HEALTH FACILITIES NOTIFIED UNDER SECTION 2912F
24 MAY AGREE IN WRITING TO SUBMIT THE CLAIM STATED IN THE NOTICE TO
25 BINDING ARBITRATION.

26 (2) THE CLAIMANTS GIVING NOTICE AND THE HEALTH PROFESSIONALS
27 OR HEALTH FACILITIES RECEIVING NOTICE UNDER SECTION 2912F MAY

1 AGREE IN WRITING TO A TOTAL AMOUNT OF DAMAGES GREATER THAN THE
2 LIMIT SET FORTH IN SUBSECTION (1).

3 (3) ARBITRATION CONDUCTED UNDER THIS SECTION IS BINDING AS
4 TO ALL PARTIES WHO HAVE ENTERED INTO THE WRITTEN AGREEMENT
5 DESCRIBED IN SUBSECTION (1). ARBITRATION UNDER THIS SECTION
6 SHALL BE SUMMARY IN NATURE AND SHALL BE CONDUCTED AS FOLLOWS:

7 (A) THE PROCEEDING SHALL BE CONDUCTED BY A SINGLE ARBITRATOR
8 CHOSEN BY AGREEMENT OF ALL PARTIES TO THE CLAIM.

9 (B) THERE SHALL BE NO LIVE TESTIMONY OF PARTIES OR
10 WITNESSES.

11 (C) THE MICHIGAN GENERAL COURT RULES PERTAINING TO DISCOVERY
12 ARE NOT APPLICABLE EXCEPT THAT ALL OF THE FOLLOWING INFORMATION
13 SHALL BE DISCLOSED AND EXCHANGED BETWEEN THE PARTIES UPON WRITTEN
14 REQUEST OF A PARTY:

15 (i) ALL RELEVANT MEDICAL RECORDS OR MEDICAL AUTHORIZATIONS
16 SUFFICIENT TO ENABLE THE PROCUREMENT OF ALL RELEVANT MEDICAL
17 RECORDS.

18 (ii) AN EXPERT WITNESS REPORT OR STATEMENT, BUT ONLY IF THE
19 PARTY PROCURING THE EXPERT WITNESS REPORT OR STATEMENT INTENDS TO
20 OR DOES FURNISH THE EXPERT WITNESS REPORT OR STATEMENT TO THE
21 ARBITRATOR FOR CONSIDERATION.

22 (iii) RELEVANT PUBLISHED WORKS, MEDICAL TEXTS, AND SCIEN-
23 TIFIC AND MEDICAL LITERATURE.

24 (iv) A CONCISE WRITTEN SUMMARY PREPARED BY A PARTY OR THE
25 PARTY'S REPRESENTATIVE SETTING FORTH THAT PARTY'S FACTUAL AND
26 LEGAL POSITION ON ISSUES PRESENTED BY THE CLAIM.

1 (v) OTHER INFORMATION CONSIDERED BY THE PARTY MAKING THE
2 REQUEST TO BE RELEVANT TO THE CLAIM OR A DEFENSE TO THE CLAIM.

3 (D) THE ARBITRATOR SHALL CONDUCT 1 OR MORE PREHEARING TELE-
4 PHONE CONFERENCE CALLS OR MEETINGS WITH THE PARTIES OR, IF A
5 PARTY IS REPRESENTED BY AN ATTORNEY, THE PARTY'S ATTORNEY, FOR
6 THE PURPOSE OF ESTABLISHING THE ORDERLY REQUEST FOR AND EXCHANGE
7 OF INFORMATION DESCRIBED IN THIS SUBSECTION, AND ANY OTHER
8 ADVANCE DISCLOSURE OF INFORMATION CONSIDERED REASONABLE AND NEC-
9 ESSARY IN THE ARBITRATOR'S SOLE DISCRETION. THE ARBITRATOR SHALL
10 SET DEADLINES FOR THE EXCHANGE OR ADVANCE DISCLOSURE OF INFORMA-
11 TION UNDER THIS SUBSECTION INCLUDING, BUT NOT LIMITED TO, THE
12 CONCISE WRITTEN SUMMARY REQUIRED UNDER SUBDIVISION (C)(iv).

13 (E) THE ARBITRATOR MAY ISSUE HIS OR HER DECISION WITHOUT
14 HOLDING A FORMAL HEARING BASED SOLELY UPON HIS OR HER REVIEW OF
15 THE MATERIALS FURNISHED BY THE PARTIES UNDER THIS SECTION. IN
16 HIS OR HER SOLE DISCRETION AND WHETHER OR NOT REQUESTED TO DO SO
17 BY A PARTY, THE ARBITRATOR MAY HOLD A HEARING. A HEARING HELD
18 UNDER THIS SUBDIVISION IS LIMITED SOLELY TO THE PRESENTATION OF
19 ORAL ARGUMENTS, SUBJECT TO TIME LIMITATIONS SET BY THE
20 ARBITRATOR.

21 (F) THE PARTY WITH THE BURDEN OF ESTABLISHING THE APPLICABLE
22 STANDARD OF PRACTICE OR CARE AND THE BREACH OF THAT STANDARD
23 SHALL ESTABLISH THE STANDARD AND BREACH EITHER BY INTRODUCTION OF
24 EXPERT WITNESS REPORTS OR STATEMENTS OR BY OTHER COMPETENT EVI-
25 DENCE INCLUDING, BUT NOT LIMITED TO, PUBLISHED WORKS. THE MANNER
26 IN WHICH THE BREACH OF THE STANDARD WAS A PROXIMATE CAUSE OF THE
27 INJURY CLAIMED AND DAMAGES MAY ALSO BE ESTABLISHED BY RELIANCE ON

1 RELEVANT PUBLISHED WORKS, MEDICAL TEXTS, AND SCIENTIFIC AND
2 MEDICAL LITERATURE.

3 (G) A WRITTEN AGREEMENT TO SUBMIT THE CLAIM TO BINDING ARBI-
4 TRATION UNDER THIS SECTION IS BINDING ON EACH PARTY SIGNING THE
5 AGREEMENT AND ON THEIR REPRESENTATIVES, INSURERS, AND HEIRS. AN
6 ARBITRATION AGREEMENT UNDER THIS SECTION SIGNED ON BEHALF OF A
7 MINOR OR A PERSON WHO IS OTHERWISE INCOMPETENT IS ENFORCEABLE AND
8 IS NOT SUBJECT TO DISAFFIRMANCE OR DISAVOWAL, IF THE MINOR OR
9 INCOMPETENT PERSON WAS REPRESENTED BY AN ATTORNEY AT THE TIME THE
10 WRITTEN AGREEMENT WAS EXECUTED.

11 (H) THE ARBITRATOR SHALL ISSUE A WRITTEN DECISION THAT
12 STATES AT A MINIMUM THE FACTUAL BASIS FOR THE DECISION AND, IF
13 THE DECISION IS FAVORABLE TO THE CLAIMANT, THE DOLLAR AMOUNT OF
14 THE AWARD. THE ARBITRATOR SHALL NOT INCLUDE COSTS, INTEREST, OR
15 ATTORNEY FEES IN AN AWARD. A PARTY MAY SUBMIT AN AWARD BY AN
16 ARBITRATOR UNDER THIS SECTION TO A COURT OF COMPETENT JURISDIC-
17 TION FOR ENTRY OF JUDGMENT ON AND ENFORCEMENT OF THE DECISION.

18 (4) AN APPEAL FROM AN ARBITRATION AWARD UNDER THIS SECTION
19 SHALL BE UNDER THE PROCEDURE AND FOR THE GROUNDS PERMITTED UNDER
20 CHAPTER 50 AND APPLICABLE COURT RULES.

21 Sec. 5040. (1) ~~The provisions of this~~ EXCEPT AS OTHERWISE
22 PROVIDED IN SECTION 2912G, THIS chapter ~~shall be applicable~~
23 APPLIES to the arbitration of a dispute, controversy, or issue
24 arising out of or resulting from injury to, or the death of, a
25 person caused by an error, omission, or negligence in the per-
26 formance of professional services by a health care provider,
27 hospital, or their agent, or based on a claimed performance of

1 such services without consent, in breach of warranty, or in
2 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 PROFESSIONAL corporation lawfully engaged in the practice of med-
9 icine, surgery, dentistry, podiatry, optometry, chiropractic, OR
10 nursing, or a person dispensing drugs or medicines.

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

14 Sec. 5856. The statutes of limitations are tolled ~~when~~
15 IF:

16 (A) ~~(1) the~~ The complaint is filed and a copy of the sum-
17 mons and complaint are served on the defendant. ~~, or when~~

18 (B) ~~(2) jurisdiction~~ JURISDICTION over the defendant is
19 otherwise acquired. ~~, or when~~

20 (C) ~~(3) the~~ THE complaint is filed and a copy of the sum-
21 mons and complaint in good faith ~~are~~ are placed in the hands of
22 an officer for immediate service, but in this case the statute
23 ~~shall~~ IS not ~~be~~ tolled longer than 90 days ~~thereafter~~ AFTER
24 THE COPY OF THE SUMMONS AND COMPLAINT IS RECEIVED BY THE
25 OFFICER.

26 (D) NOTICE IS GIVEN IN COMPLIANCE WITH SECTION 2912F.

1 Sec. 6013. (1) Interest shall be allowed on a money judgment
2 recovered in a civil action, as provided in this section. —
3 ~~except that~~ HOWEVER, for complaints filed UNDER THIS ACT on or
4 after October 1, 1986, interest shall not be allowed on future
5 damages from the date of filing the complaint to the date of
6 entry of the judgment OR, IN A CIVIL ACTION BASED ON MEDICAL MAL-
7 PRACTICE, FROM THE DATE NOTICE IS GIVEN IN COMPLIANCE WITH SEC-
8 TION 2912F TO THE DATE OF ENTRY OF THE JUDGMENT. As used in this
9 subsection, "future damages" means that term as defined in sec-
10 tion 6301.

11 (2) For complaints filed before June 1, 1980, in an action
12 involving other than a written instrument having a rate of inter-
13 est exceeding 6% per year, the interest on the judgment shall be
14 calculated from the date of filing the complaint to June 1, 1980,
15 at the rate of 6% per year and on and after June 1, 1980, to the
16 date of satisfaction of the judgment at the rate of 12% per year
17 compounded annually.

18 (3) For complaints filed before June 1, 1980, in an action
19 involving a written instrument having a rate of interest exceed-
20 ing 6% per year, the interest on the judgment shall be calculated
21 from the date of filing the complaint to the date of satisfaction
22 of the judgment at the rate specified in the instrument if the
23 rate was legal at the time the instrument was executed. However,
24 the rate after the date judgment is entered shall not exceed the
25 following:

26 (a) Seven percent per year compounded annually for any
27 period of time between the date judgment is entered and the date

1 of satisfaction of the judgment ~~which~~ THAT elapses before June
2 1, 1980.

3 (b) Thirteen percent per year compounded annually for any
4 period of time between the date judgment is entered and the date
5 of satisfaction of the judgment ~~which~~ THAT elapses after May
6 31, 1980.

7 (4) For complaints filed on or after June 1, 1980, but
8 before January 1, 1987, interest shall be calculated from the
9 date of filing the complaint to the date of satisfaction of the
10 judgment at the rate of 12% per year compounded annually unless
11 the judgment is rendered on a written instrument having a higher
12 rate of interest. In that case interest shall be calculated at
13 the rate specified in the instrument if the rate was legal at the
14 time the instrument was executed. The rate shall not exceed 13%
15 per year compounded annually after the date judgment is entered.

16 (5) For complaints filed on or after January 1, 1987, if a
17 judgment is rendered on a written instrument, interest shall be
18 calculated from the date of filing the complaint to the date of
19 satisfaction of the judgment at the rate of 12% per year com-
20 pounded annually, unless the instrument has a higher rate of
21 interest. In that case interest shall be calculated at the rate
22 specified in the instrument if the rate was legal at the time the
23 instrument was executed. The rate shall not exceed 13% per year
24 compounded annually after the date judgment is entered.

25 (6) Except as otherwise provided in subsection (5) AND
26 SUBJECT TO SUBSECTION (9), for complaints filed on or after
27 January 1, 1987, interest on a money judgment recovered in a

1 civil action UNDER THIS ACT shall be calculated at 6-month
2 intervals from the date of filing the complaint at a rate of
3 interest ~~which~~ THAT is equal to 1% plus the average interest
4 rate paid at auctions of 5-year United States treasury notes
5 during the 6 months immediately preceding July 1 and January 1,
6 as certified by the state treasurer, and compounded annually,
7 pursuant to this section.

8 (7) If a bona fide, reasonable written offer of settlement
9 in a civil action based on tort is made by the party against whom
10 the judgment is subsequently rendered AND IS REJECTED BY THE
11 PLAINTIFF, the court shall order that interest ~~shall~~ not be
12 allowed beyond the date the BONA FIDE, REASONABLE written offer
13 of settlement ~~which is made and rejected by the plaintiff, and~~
14 is filed with the court.

15 (8) Except as otherwise provided in subsection (1), if a
16 bona fide, reasonable written offer of settlement in a civil
17 action based on tort is not made by the party against whom the
18 judgment is subsequently rendered, or is made and ~~that offer~~ is
19 not filed with the court, the court shall order that interest be
20 calculated from the date of filing the complaint to the date of
21 satisfaction of the judgment OR, IF THE CIVIL ACTION IS BASED ON
22 MEDICAL MALPRACTICE, FROM THE DATE NOTICE IS GIVEN IN COMPLIANCE
23 WITH SECTION 2912F TO THE DATE OF SATISFACTION OF THE JUDGMENT.

24 (9) Except as otherwise provided in subsection (1), if a
25 bona fide, reasonable written offer of settlement in a civil
26 action based on tort is made by a plaintiff for whom the judgment
27 is subsequently rendered and that offer is rejected and the offer

1 is filed with the court, the court shall order that interest be
2 calculated from the date of the rejection of the offer to the
3 date of satisfaction of the judgment at a rate of interest equal
4 to 2% plus the rate of interest computed under subsection (6).

5 (10) ~~An~~ A BONA FIDE, REASONABLE WRITTEN offer OF
6 SETTLEMENT made pursuant to this section ~~which~~ THAT is not
7 accepted within 21 days after the offer is made ~~shall be~~
8 ~~considered~~ IS rejected. A rejection ~~—~~ under this subsection
9 or otherwise ~~—~~ does not preclude a later offer by either
10 party.

11 (11) As used in this section:

12 (a) "Bona fide, reasonable written offer of settlement"
13 means:

14 (i) With respect to an offer of settlement made by a
15 defendant against whom judgment is subsequently rendered, ~~an~~ A
16 WRITTEN offer of settlement that is not less than 90% of the
17 amount actually received by the plaintiff in the action through
18 judgment.

19 (ii) With respect to an offer of settlement made by a plain-
20 tiff, ~~an~~ A WRITTEN offer of settlement that is not more than
21 110% of the amount actually received by the plaintiff in the
22 action through judgment.

23 (b) "Defendant" means a defendant, a counter-defendant, or a
24 cross-defendant.

25 (c) "Party" means a plaintiff or a defendant.

26 (d) "Plaintiff" means a plaintiff, a counter-plaintiff, or a
27 cross-plaintiff.

1 Section 2. Chapter 49 of Act No. 236 of the Public Acts of
2 1961, being sections 600.4901 to 600.4923 of the Michigan
3 Compiled Laws, is repealed.

4 Section 3. This amendatory act shall take effect October 1,
5 1993.

6 Section 4. (1) Sections 1483, 2912a, and 5856 of Act
7 No. 236 of the Public Acts of 1961, as amended by this amendatory
8 act, do not apply to causes of action arising before October 1,
9 1993.

10 (2) Sections 5040 and 6013 of Act No. 236 of the Public Acts
11 of 1961, as amended by this amendatory act, do not apply to cases
12 filed before October 1, 1993.

13 (3) Sections 2912f and 2912g of Act No. 236 of the Public
14 Acts of 1961, as added by this amendatory act, apply to cases
15 filed on or after October 1, 1993.