



HOUSE BILL No. 5947

November 10 1994 Introduced by Rep Fitzgerald and referred to the Committee on Judiciary

A bill to amend sections 2912d, 2912e, 6013, and 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 sections 600 2912d, 600 2912e 600 6013, and 600 6304 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2912d, 2912e 6013, and 6304 of Act
2 No 236 of the Public Acts of 1961, as amended by Act No 78 of
3 the Public Acts of 1993, being sections 600 2912d 600 2912e
4 600 6013, and 600 6304 of the Michigan Compiled Laws, are amended
5 to read as follows

6 Sec 2912d (1) Subject to subsection (2), the plaintiff in
7 an action alleging medical malpractice or, if the plaintiff is
8 represented by an attorney, the plaintiff s attorney shall file

1 with the complaint an affidavit of merit signed by a health
2 professional who the plaintiff's attorney reasonably believes
3 meets the requirements for an expert witness under section 2169
4 The affidavit of merit shall certify that the health professional
5 has reviewed the notice and all medical records supplied to him
6 or her by the plaintiff's attorney concerning the allegations
7 contained in the notice and shall contain a statement of each of
8 the following

9 (a) The applicable standard of practice or care

10 (b) The health professional's opinion that the applicable
11 standard of practice or care was breached by the health profes-
12 sional or health facility receiving the notice

13 (c) The actions that should have been taken or omitted by
14 the health professional or health facility in order to have com-
15 plied with the applicable standard of practice or care

16 (d) The manner in which the breach of the standard of prac-
17 tice or care was the proximate cause of the injury alleged in the
18 notice

19 (2) Upon motion of a party for good cause shown the court
20 in which the complaint is filed may grant the plaintiff or if
21 the plaintiff is represented by an attorney, the plaintiff's
22 attorney an additional 28 days in which to file the affidavit
23 required under subsection (1)

24 (3) If the defendant in an action alleging medical malprac-
25 tice fails to allow access to medical records within the time
26 period set forth in section ~~2912B(6)~~ 2912B(5) the affidavit

1 required under subsection (1) may be filed within 91 days after
2 the filing of the complaint

3 Sec 2912e (1) In an action alleging medical malpractice,
4 within 21 days after the plaintiff has filed an affidavit in com-
5 pliance with section 2912d, the defendant shall file an answer to
6 the complaint Subject to subsection (2), the defendant or, if
7 the defendant is represented by an attorney, the defendant's
8 attorney shall file, not later than 91 days after the plaintiff
9 or the plaintiff's attorney files the affidavit required under
10 section 2912d, an affidavit of meritorious defense signed by a
11 health professional who the defendant's attorney reasonably
12 believes meets the requirements for an expert witness under sec-
13 tion 2169 The affidavit of meritorious defense shall certify
14 that the health professional has reviewed the complaint and all
15 medical records supplied to him or her by the defendant's attor-
16 ney concerning the allegations contained in the complaint and
17 shall contain a statement of each of the following

18 (a) The factual basis for each defense to the claims made
19 against the defendant in the complaint

20 (b) The standard of practice or care that the health profes-
21 sional or health facility named as a defendant in the complaint
22 claims to be applicable to the action and that the health profes-
23 sional or health facility complied with that standard

24 (c) The manner in which it is claimed by the health profes-
25 sional or health facility named as a defendant in the complaint
26 that there was compliance with the applicable standard of
27 practice or care

1 (d) The manner in which the health professional or health
2 facility named as a defendant in the complaint contends that the
3 alleged injury or alleged damage to the plaintiff is not related
4 to the care and treatment rendered

5 (2) If the plaintiff in an action alleging medical malprac-
6 tice fails to allow access to medical records as required under
7 section ~~2912B(6)~~ 2912B(5) the affidavit required under subsec-
8 tion (1) may be filed within 91 days after filing an answer to
9 the complaint

10 Sec 6013 (1) Interest shall be allowed on a money judgment
11 recovered in a civil action, as provided in this section
12 However, for complaints filed on or after October 1, 1986, inter-
13 est shall not be allowed on future damages from the date of
14 filing the complaint to the date of entry of the judgment As
15 used in this subsection, "future damages" means that term as
16 defined in section 6301

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

24 (3) For complaints filed before June 1, 1980, in an action
25 involving a written instrument having a rate of interest exceed-
26 ing 6% per year, the interest on the judgment shall be calculated
27 from the date of filing the complaint to the date of satisfaction

1 of the judgment at the rate specified in the instrument if the
2 rate was legal at the time the instrument was executed. However
3 the rate after the date judgment is entered shall not exceed the
4 following

5 (a) Seven percent per year compounded annually for any
6 period of time between the date judgment is entered and the date
7 of satisfaction of the judgment that elapses before June 1
8 1980

9 (b) Thirteen percent per year compounded annually for any
10 period of time between the date judgment is entered and the date
11 of satisfaction of the judgment that elapses after May 31, 1980

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

21 (5) For complaints filed on or after January 1, 1987, if a
22 judgment is rendered on a written instrument, interest shall be
23 calculated from the date of filing the complaint to the date of
24 satisfaction of the judgment at the rate of 12% per year com-
25 pounded annually, unless the instrument has a higher rate of
26 interest. In that case interest shall be calculated at the rate
27 specified in the instrument if the rate was legal at the time the

1 instrument was executed The rate shall not exceed 13% per year
2 compounded annually after the date judgment is entered

3 (6) Except as otherwise provided in subsection (5) and
4 subject to subsection (11), for complaints filed on or after
5 January 1, 1987, interest on a money judgment recovered in a
6 civil action shall be calculated at 6-month intervals from the
7 date of filing the complaint at a rate of interest that is equal
8 to 1% plus the average interest rate paid at auctions of 5-year
9 United States treasury notes during the 6 months immediately pre-
10 ceding July 1 and January 1, as certified by the state treasurer,
11 and compounded annually, pursuant to this section Interest
12 under this subsection shall be calculated on the entire amount of
13 the money judgment, including attorney fees and other costs
14 However, the amount of interest attributable to that part of the
15 money judgment from which attorney fees are paid shall be
16 retained by the plaintiff and not paid to the plaintiff s
17 attorney

18 (7) If a bona fide, reasonable written offer of settlement
19 in a civil action based on tort is made by the party against whom
20 the judgment is subsequently rendered and is rejected by the
21 plaintiff, the court shall order that interest not be allowed
22 beyond the date the bona fide reasonable written offer of set-
23 tlement is filed with the court

24 (8) Except as otherwise provided in subsection (1) and
25 subject to subsections (9) and (10), if a bona fide reasonable
26 written offer of settlement in a civil action based on tort is
27 not made by the party against whom the judgment is subsequently

1 rendered or is made and is not filed with the court the court
2 shall order that interest be calculated from the date of filing
3 the complaint to the date of satisfaction of the judgment

4 (9) If a civil action is based on medical malpractice and
5 the defendant in the medical malpractice action failed to allow
6 access to medical records as required under section ~~2912b(6)~~
7 2912B(5), the court shall order that interest be calculated from
8 the date notice was given in compliance with section 2912b to the
9 date of satisfaction of the judgment

10 (10) If a civil action is based on medical malpractice and
11 the plaintiff in the medical malpractice action failed to allow
12 access to medical records as required under section ~~2912b(6)~~
13 2912B(5), the court shall order that interest be calculated from
14 182 days after the date the complaint was filed to the date of
15 satisfaction of the judgment

16 (11) Except as otherwise provided in subsection (1) if a
17 bona fide, reasonable written offer of settlement in a civil
18 action based on tort is made by a plaintiff for whom the judgment
19 is subsequently rendered and that offer is rejected and the offer
20 is filed with the court the court shall order that interest be
21 calculated from the date of the rejection of the offer to the
22 date of satisfaction of the judgment at a rate of interest equal
23 to 2% plus the rate of interest computed under subsection (6)

24 (12) A bona fide, reasonable written offer of settlement
25 made pursuant to this section that is not accepted within 21 days
26 after the offer is made is rejected A rejection under this

1 subsection or otherwise does not preclude a later offer by either
2 party

3 (13) As used in this section

4 (a) "Bona fide, reasonable written offer of settlement"

5 means

6 (1) With respect to an offer of settlement made by a
7 defendant against whom judgment is subsequently rendered a writ-
8 ten offer of settlement that is not less than 90% of the amount
9 actually received by the plaintiff in the action through
10 judgment

11 (11) With respect to an offer of settlement made by a plain-
12 tiff, a written offer of settlement that is not more than 110% of
13 the amount actually received by the plaintiff in the action
14 through judgment

15 (b) "Defendant" means a defendant a counter-defendant, or a
16 cross-defendant

17 (c) "Party" means a plaintiff or a defendant

18 (d) "Plaintiff" means a plaintiff a counter-plaintiff or a
19 cross-plaintiff

20 Sec 6304 (1) In a personal injury action involving fault
21 of more than 1 party to the action, including third-party
22 defendants, the court, unless otherwise agreed by all parties to
23 the action, shall instruct the jury to answer special interroga-
24 tories or, if there is no jury, shall make findings indicating
25 both of the following

26 (a) The total amount of each plaintiff's damages

1 (b) The percentage of the total fault of all of the parties
2 regarding each claim as to each plaintiff defendant and
3 third-party defendant

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

8 (3) If it is determined under subsections (1) and (2) that a
9 plaintiff is not at fault, subsections (5) and ~~(6)~~ (7) do not
10 apply

11 (4) Subsections (5) and ~~(6)~~ (7) do not apply to a products
12 liability action, as defined in section 2945

13 (5) The court shall determine the award of damages to each
14 plaintiff in accordance with the findings under subsection (1),
15 subject to any reduction under subsection (6) or section 2925d or
16 6303, and enter judgment against each party, including a
17 third-party defendant, except that judgment shall not be entered
18 against a person who has been released from liability pursuant to
19 section 2925d Except as otherwise provided in subsection (7) a
20 person shall not be required to pay damages in an amount greater
21 than his or her percentage of fault

22 (6) In an action alleging medical malpractice, the court
23 shall reduce an award of damages in excess of 1 of the limita-
24 tions set forth in section 1483 to the amount of the appropriate
25 limitation set forth in section 1483 The jury shall not be
26 advised by the court or by counsel for either party of the

1 limitations set forth in section 1483 or any other provision of
2 section 1483

3 (7) Except as otherwise provided in this subsection and sub-
4 section (8), upon motion made not later than 6 months after a
5 final judgment is entered, the court shall determine whether all
6 or part of a party's share of the obligation is uncollectible
7 from that party, and shall reallocate any uncollectible amount
8 among the other parties according to their respective percentages
9 of fault as determined under subsection (1) A party shall not
10 be required to pay a percentage of any uncollectible amount that
11 exceeds that party's percentage of fault as determined under sub-
12 section (1) The party whose liability is reallocated continues
13 to be subject to contribution and to any continuing liability to
14 the plaintiff on the judgment

15 (8) Notwithstanding subsection (3), a governmental agency
16 other than a governmental hospital or medical care facility, is
17 not required to pay a percentage of any uncollectible amount that
18 exceeds the governmental agency's percentage of fault as deter-
19 mined under subsection (1)