



SENATE BILL No. 334

February 4, 1993, Introduced by Senators PRIDNIA, EHLERS, GEAKE, WELBORN and MC MANUS and referred to the Committee on Health Policy.

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) SUBJECT TO SUBSECTION (2), IN AN ACTION
6 ALLEGING MEDICAL MALPRACTICE AGAINST A PHYSICIAN, THE PHYSICIAN'S
7 EMPLOYER, OR A HOSPITAL IN WHICH THE PHYSICIAN IS ADMITTED TO
8 PRACTICE, IF A VIOLATION OF A STANDARD OF CARE IS ALLEGED AND IF

1 THE PHYSICIAN HAS ELECTED TO PARTICIPATE IN THE MEDICAL LIABILITY
2 DEMONSTRATION PROJECT UNDER SECTIONS 17090 TO 17098 OF THE PUBLIC
3 HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SEC-
4 TIONS 333.17090 TO 333.17098 OF THE MICHIGAN COMPILED LAWS, THE
5 PHYSICIAN, THE PHYSICIAN'S EMPLOYER, OR THE HOSPITAL IN WHICH THE
6 PHYSICIAN IS ADMITTED TO PRACTICE MAY INTRODUCE INTO EVIDENCE AS
7 AN AFFIRMATIVE DEFENSE THE EXISTENCE OF THE PRACTICE PARAMETERS
8 AND RISK MANAGEMENT PROTOCOLS PROMULGATED AS RULES UNDER SECTION
9 17095 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION
10 333.17095 OF THE MICHIGAN COMPILED LAWS. THE PLAINTIFF IN AN
11 ACTION DESCRIBED IN THIS SUBSECTION SHALL NOT INTRODUCE INTO EVI-
12 DENCE THE EXISTENCE OF THE PRACTICE PARAMETERS AND RISK MANAGE-
13 MENT PROTOCOLS DESCRIBED IN THIS SUBSECTION.

14 (2) IN ORDER TO RELY UPON THE AFFIRMATIVE DEFENSE PERMITTED
15 UNDER SUBSECTION (1) AS THE BASIS FOR A DETERMINATION THAT THE
16 PHYSICIAN'S CONDUCT DID NOT CONSTITUTE MEDICAL MALPRACTICE, A
17 PHYSICIAN, PHYSICIAN'S EMPLOYER, OR HOSPITAL IN WHICH THE PHYSI-
18 CIAN IS ADMITTED TO PRACTICE THAT PLEADS COMPLIANCE WITH PRACTICE
19 PARAMETERS AND RISK MANAGEMENT PROTOCOLS DESCRIBED IN SUBSECTION
20 (1) HAS THE BURDEN OF PROVING THAT THE PHYSICIAN'S CONDUCT WAS
21 CONSISTENT WITH THOSE PRACTICE PARAMETERS AND RISK MANAGEMENT
22 PROTOCOLS.

23 (3) IN AN ACTION DESCRIBED IN SUBSECTION (1), IF THE PHYSI-
24 CIAN, THE PHYSICIAN'S EMPLOYER, OR THE HOSPITAL IN WHICH THE PHY-
25 SICIAN IS ADMITTED TO PRACTICE RELIES ON THE AFFIRMATIVE DEFENSE
26 PERMITTED UNDER SUBSECTION (1), THE PLAINTIFF MAY INTRODUCE
27 EVIDENCE ON THE ISSUE OF COMPLIANCE.

1 (4) UNLESS INDEPENDENTLY DEVELOPED FROM A SOURCE OUTSIDE OF
2 THE PROCESS DESCRIBED IN SUBSECTION (1), THE PRACTICE PARAMETERS
3 AND RISK MANAGEMENT PROTOCOLS DESCRIBED IN SUBSECTION (1) ARE NOT
4 ADMISSIBLE IN EVIDENCE IN A CIVIL CAUSE OF ACTION AGAINST EITHER
5 OF THE FOLLOWING:

6 (A) A PHYSICIAN WHO IS NOT PARTICIPATING IN THE MEDICAL
7 LIABILITY DEMONSTRATION PROJECT DESCRIBED IN SUBSECTION (1).

8 (B) A PHYSICIAN WHO IS PARTICIPATING IN THE MEDICAL LIABIL-
9 ITY DEMONSTRATION PROJECT DESCRIBED IN SUBSECTION (1), BUT IS
10 DEFENDING IN A MEDICAL MALPRACTICE ACTION ACCRUING ON OR BEFORE
11 THE EFFECTIVE DATE OF THE RULES PROMULGATED UNDER SECTION 17095
12 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978 OR AFTER THE EXPIRATION
13 OF 5 YEARS AFTER THAT EFFECTIVE DATE.

14 (5) THIS SECTION DOES NOT AFFECT THE PLAINTIFF'S BURDEN OF
15 PROVING THE PLAINTIFF'S CAUSE OF ACTION. THIS SECTION DOES NOT
16 ALTER THE BURDEN OF PROOF IN MEDICAL MALPRACTICE ACTIONS.

17 (6) THIS SECTION APPLIES TO A CLAIM BASED ON MEDICAL MAL-
18 PRACTICE THAT ACCRUES ON OR AFTER THE EFFECTIVE DATE OF THE RULES
19 PROMULGATED UNDER SECTION 17095 OF ACT NO. 368 OF THE PUBLIC ACTS
20 OF 1978 BUT BEFORE THE EXPIRATION OF 5 YEARS AFTER THAT EFFECTIVE
21 DATE.

22 Section 2. This amendatory act shall not take effect unless
23 all of the following bills of the 87th Legislature are enacted
24 into law:

25 (a) Senate Bill No. _____ or House Bill No. _____ (request
26 no. 01138'93).

1 (b) Senate Bill No. 335.

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