

# HOUSE BILL No. 5787

March 12, 2002, Introduced by Reps. Vander Veen, Ehardt, George, Voorhees, Drolet and Ruth Johnson and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending section 2912d (MCL 600.2912d), as amended by 1993  
PA 78.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2912d. (1) Subject to subsection (2), the plaintiff in  
2   an action alleging medical malpractice or, if the plaintiff is  
3   represented by an attorney, the plaintiff's attorney shall file  
4   with the complaint an affidavit of merit signed by a health pro-  
5   fessional who the plaintiff's attorney reasonably believes meets  
6   the requirements ~~for an expert witness under section 2169~~ OF  
7   SUBSECTION (4). The affidavit of merit shall certify that the  
8   health professional has reviewed the notice and all medical  
9   records supplied to him or her by the plaintiff's attorney

1 concerning the allegations contained in the notice and shall  
2 contain a statement of each of the following:

3 (a) The applicable standard of practice or care.

4 (b) The health professional's opinion that the applicable  
5 standard of practice or care was breached by the health profes-  
6 sional or health facility receiving the notice.

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

10 (d) The manner in which the breach of the standard of prac-  
11 tice or care was the proximate cause of the injury alleged in the  
12 notice.

13 (2) Upon motion of a party for good cause shown, the court  
14 in which the complaint is filed may grant the plaintiff or, if  
15 the plaintiff is represented by an attorney, the plaintiff's  
16 attorney an additional 28 days in which to file the affidavit  
17 required under subsection (1).

18 (3) If the defendant in an action alleging medical malprac-  
19 tice fails to allow access to medical records within the time  
20 period set forth in section ~~2912b(6)~~ 2912B(5), the affidavit  
21 required under subsection (1) may be filed within 91 days after  
22 the filing of the complaint.

23 (4) A HEALTH PROFESSIONAL WHO SIGNS AN AFFIDAVIT OF MERIT  
24 UNDER THIS SECTION SHALL MEET ALL THE FOLLOWING REQUIREMENTS AT  
25 THE TIME THE AFFIDAVIT IS SIGNED:

26 (A) THE HEALTH PROFESSIONAL MEETS THE REQUIREMENTS FOR  
27 SERVING AS AN EXPERT WITNESS UNDER SECTION 2169.

1           (B) THE HEALTH PROFESSIONAL IS LICENSED IN THIS STATE AS A  
2 HEALTH PROFESSIONAL UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE,  
3 1978 PA 368, MCL 333.16101 TO 333.18838.

4           (C) THE HEALTH PROFESSIONAL DEVOTES A MAJORITY OF HIS OR HER  
5 PROFESSIONAL TIME TO THE ACTIVE CLINICAL PRACTICE OF THE SAME  
6 HEALTH PROFESSION IN WHICH THE PARTY WHO IS THE SUBJECT OF THE  
7 AFFIDAVIT IS LICENSED.

8           (D) THE HEALTH PROFESSIONAL DEVOTES A MAJORITY OF HIS OR HER  
9 PROFESSIONAL TIME TO EITHER OF THE FOLLOWING:

10           (i) IF THE PARTY WHO IS THE SUBJECT OF THE AFFIDAVIT IS A  
11 SPECIALIST, THE ACTIVE CLINICAL PRACTICE OF THAT SPECIALTY.

12           (ii) IF THE PARTY WHO IS THE SUBJECT OF THE AFFIDAVIT IS A  
13 GENERAL PRACTITIONER, ACTIVE CLINICAL PRACTICE AS A GENERAL  
14 PRACTITIONER.