

SENATE BILL No. 1245

April 24, 2002, Introduced by Senator GOSCHKA and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 5838a (MCL 600.5838a), as amended by 1993 PA
78.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5838a. (1) For purposes of this act, a claim based on
2 the medical malpractice of a person or entity who is or who holds
3 himself or herself out to be a licensed health care professional,
4 licensed health facility or agency, or an employee or agent of a
5 licensed health facility or agency who is engaging in or other-
6 wise assisting in medical care and treatment, whether or not the
7 licensed health care professional, licensed health facility or
8 agency, or their employee or agent is engaged in the practice of
9 the health profession in a sole proprietorship, partnership,
10 professional corporation, or other business entity, accrues at

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1 the time of the act or omission that is the basis for the claim
2 of medical malpractice, regardless of the time the plaintiff dis-
3 covers or otherwise has knowledge of the claim. As used in this
4 subsection:

5 (a) "Licensed health facility or agency" means a health
6 facility or agency licensed under article 17 of the public health
7 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~
8 ~~333.20101 to 333.22260 of the Michigan Compiled Laws~~ 1978
9 PA 368, MCL 333.20101 TO 333.22260.

10 (b) "Licensed health care professional" means an individual
11 licensed or registered under article 15 of the public health
12 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~
13 ~~333.16101 to 333.18838 of the Michigan Compiled Laws~~ 1978
14 PA 368, MCL 333.16101 TO 333.18838, and engaged in the practice
15 of his or her health profession in a sole proprietorship, part-
16 nership, professional corporation, or other business entity.
17 However, licensed health care professional does not include a
18 sanitarian or a veterinarian.

19 (2) Except as otherwise provided in this subsection, an
20 action involving a claim based on medical malpractice may be com-
21 menced at any time within the applicable period prescribed in
22 section 5805, ~~or~~ sections 5851 to 5854, OR SECTION 5856, or
23 within 6 months after the plaintiff discovers or should have dis-
24 covered the existence of the claim, whichever is later. However,
25 except as otherwise provided in section 5851(7) or (8), the claim
26 shall not be commenced later than 6 years after the date of the
27 act or omission that is the basis for the claim. The burden of

1 proving that the plaintiff, as a result of physical discomfort,
2 appearance, condition, or otherwise, neither discovered nor
3 should have discovered the existence of the claim at least
4 6 months before the expiration of the period otherwise applicable
5 to the claim is on the plaintiff. A medical malpractice action
6 that is not commenced within the time prescribed by this subsec-
7 tion is barred. This subsection does not apply, and the plain-
8 tiff is subject to the period of limitations set forth in subsec-
9 tion (3), under 1 of the following circumstances:

10 (a) If discovery of the existence of the claim was prevented
11 by the fraudulent conduct of the health care professional against
12 whom the claim is made or a named employee or agent of the health
13 professional against whom the claim is made, or of the health
14 facility against whom the claim is made or a named employee or
15 agent of a health facility against whom the claim is made. TO
16 COMMENCE AN ACTION ALLEGING MEDICAL MALPRACTICE USING THE
17 EXTENDED LIMITATION PROVIDED IN THIS SUBDIVISION, THE PLAINTIFF
18 SHALL FILE WITH THE COMPLAINT A SWORN STATEMENT SETTING FORTH THE
19 FACTS CONSTITUTING THE FRAUDULENT CONCEALMENT AND THE EVIDENCE
20 THAT PROVES THOSE FACTS INDEPENDENT OF THE PLAINTIFF'S STATEMENTS
21 AND BELIEFS.

22 (b) There has been permanent loss of or damage to a repro-
23 ductive organ resulting in the inability to procreate.

24 (3) An action involving a claim based on medical malpractice
25 under circumstances described in subsection (2)(a) or (b) may be
26 commenced at any time within the applicable period prescribed in
27 section 5805, ~~or~~ sections 5851 to 5854, OR SECTION 5856, or

1 within 6 months after the plaintiff discovers or should have
2 discovered the existence of the claim, whichever is later. The
3 burden of proving that the plaintiff, as a result of physical
4 discomfort, appearance, condition or otherwise, neither discov-
5 ered nor should have discovered the existence of the claim at
6 least 6 months before the expiration of the period otherwise
7 applicable to the claim is on the plaintiff. A medical malprac-
8 tice action that is not commenced within the time prescribed by
9 this subsection is barred.

10 Enacting section 1. This amendatory act does not take
11 effect unless Senate Bill No. _____ or House Bill No. _____
12 (request no. 05891'01) of the 91st Legislature is enacted into
13 law.