

SENATE BILL No. 1249

April 24, 2002, Introduced by Senators KOIVISTO, GOUGEON, PETERS, SMITH, MC MANUS, DINGELL, BYRUM, DE BEAUSSAERT and GOSCHKA and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2912a. (1) Subject to ~~subsection (2)~~ SUBSECTIONS (2)
2 AND (3), in an action alleging malpractice, the plaintiff has the
3 burden of proving ~~that~~ 1 OF THE FOLLOWING in light of the state
4 of the art existing at the time of the alleged malpractice:

5 (a) The defendant, if a general practitioner, failed to pro-
6 vide the plaintiff the recognized standard of acceptable profes-
7 sional practice or care in the community in which the defendant
8 practices or in a similar community, and ~~that~~ as a proximate
9 result of the defendant failing to provide that standard, the
10 plaintiff suffered an injury.

1 (b) The defendant, if a specialist, failed to provide the
2 recognized standard of practice or care within that specialty as
3 reasonably applied in light of the facilities available in the
4 community or other facilities reasonably available under the cir-
5 cumstances, and as a proximate result of the defendant failing to
6 provide that standard, the plaintiff suffered an injury.

7 (2) In an action alleging medical malpractice, the plaintiff
8 has the burden of proving that he or she suffered OR WILL IN THE
9 FUTURE SUFFER an injury that more probably than not was proxi-
10 mately caused by the negligence of the defendant or defendants.

11 (3) In an action alleging medical malpractice, the
12 plaintiff, ~~cannot~~ INCLUDING A LIVING PLAINTIFF, MAY recover for
13 loss of an opportunity to survive or an opportunity to achieve a
14 better result. ~~unless the opportunity was greater than 50%.~~ THE
15 PLAINTIFF MAY RECOVER ECONOMIC AND NONECONOMIC DAMAGES IN PROPOR-
16 TION TO THE LOSS OF OPPORTUNITY TO SURVIVE OR ACHIEVE A BETTER
17 RESULT THAT WAS PROXIMATELY CAUSED IN WHOLE OR IN PART BY THE
18 ALLEGED MALPRACTICE.