

HOUSE BILL No. 5527

December 14, 2005, Introduced by Reps. Gaffney, Ward, Drolet, Byrum and Condino and referred to the Committee on House Oversight, Elections, and Ethics.

A bill to amend 1961 PA 236, entitled "Revised judiciary act of 1961," by amending sections 2946 and 5805 (MCL 600.2946 and 600.5805), section 2946 as amended by 1995 PA 249 and section 5805 as amended by 2002 PA 715.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2946. (1) It ~~shall be~~ **IS** admissible as evidence in a
2 product liability action that the production of the product was in
3 accordance with the generally recognized and prevailing
4 nongovernmental standards in existence at the time the specific
5 unit of the product was sold or delivered by the defendant to the
6 initial purchaser or user.

7 (2) In a product liability action brought against a

1 manufacturer or seller for harm allegedly caused by a production
2 defect, the manufacturer or seller is not liable unless the
3 plaintiff establishes that the product was not reasonably safe at
4 the time the specific unit of the product left the control of the
5 manufacturer or seller and that, according to generally accepted
6 production practices at the time the specific unit of the product
7 left the control of the manufacturer or seller, a practical and
8 technically feasible alternative production practice was available
9 that would have prevented the harm without significantly impairing
10 the usefulness or desirability of the product to users and without
11 creating equal or greater risk of harm to others. An alternative
12 production practice is practical and feasible only if the
13 technical, medical, or scientific knowledge relating to production
14 of the product, at the time the specific unit of the product left
15 the control of the manufacturer or seller, was developed,
16 available, and capable of use in the production of the product and
17 was economically feasible for use by the manufacturer. Technical,
18 medical, or scientific knowledge is not economically feasible for
19 use by the manufacturer if use of that knowledge in production of
20 the product would significantly compromise the product's usefulness
21 or desirability.

22 (3) With regard to the production of a product that is the
23 subject of a product liability action, evidence of a philosophy,
24 theory, knowledge, technique, or procedure that is learned, placed
25 in use, or discontinued after the event resulting in the death of
26 the person or injury to the person or property, which if learned,
27 placed in use, or discontinued before the event would have made the

1 event less likely to occur, is admissible only for the purpose of
2 proving the feasibility of precautions, if controverted, or for
3 impeachment.

4 (4) In a product liability action brought against a
5 manufacturer or seller for harm allegedly caused by a product,
6 **OTHER THAN A PRODUCT TO WHICH SUBSECTION (5) APPLIES**, there is a
7 rebuttable presumption that the manufacturer or seller is not
8 liable if, at the time the specific unit of the product was sold or
9 delivered to the initial purchaser or user, the aspect of the
10 product that allegedly caused the harm was in compliance with
11 standards relevant to the event causing the death or injury set
12 forth in a federal or state statute or was approved by, or was in
13 compliance with regulations or standards relevant to the event
14 causing the death or injury promulgated by, a federal or state
15 agency responsible for reviewing the safety of the product.
16 Noncompliance with a standard relevant to the event causing the
17 death or injury set forth in a federal or state statute or lack of
18 approval by, or noncompliance with regulations or standards
19 relevant to the event causing the death or injury promulgated by, a
20 federal or state agency does not raise a presumption of negligence
21 on the part of a manufacturer or seller. Evidence of compliance or
22 noncompliance with a regulation or standard not relevant to the
23 event causing the death or injury is not admissible.

24 (5) In a product liability action against a manufacturer or
25 seller — **OF** a product that is a drug, **THERE IS A REBUTTABLE**
26 **PRESUMPTION THAT THE PRODUCT** is not defective or unreasonably
27 dangerous, and **THAT** the manufacturer or seller is not liable, if

1 the drug was approved for safety and efficacy by the United States
2 food and drug administration, and the drug and its labeling were in
3 compliance with the United States food and drug administration's
4 approval at the time the drug left the control of the manufacturer
5 or seller. However, this subsection does not apply to a drug that
6 is sold in the United States after the effective date of an order
7 of the United States food and drug administration to remove the
8 drug from the market or to withdraw its approval. This subsection
9 does not apply if the defendant at any time before the event that
10 allegedly caused the injury does ~~any~~ **EITHER** of the following:

11 (a) Intentionally withholds from or misrepresents to the
12 United States food and drug administration information concerning
13 the drug that is required to be submitted under the federal food,
14 drug, and cosmetic act, ~~chapter 675, 52 Stat. 1040, 21 U.S.C. 301~~
15 ~~to 321, 331 to 343-2, 344 to 346a, 347, 348 to 353, 355 to 360,~~
16 ~~360b to 376, and 378 to 395, and~~ **21 USC 301 TO 399, IF** the drug
17 would not have been approved ~~—~~ or the United States food and drug
18 administration would have withdrawn approval for the drug ~~if~~ **HAD**
19 the information ~~were~~ **BEEN** accurately submitted.

20 (b) Makes an illegal payment to an official or employee of the
21 United States food and drug administration for the purpose of
22 securing or maintaining approval of the drug.

23 Sec. 5805. (1) A person shall not bring or maintain an action
24 to recover damages for injuries to persons or property unless,
25 after the claim first accrued to the plaintiff or to someone
26 through whom the plaintiff claims, the action is commenced within
27 the periods of time prescribed by this section.

1 (2) ~~The~~ **SUBJECT TO SUBSECTIONS (3) AND (4), THE** period of
2 limitations is 2 years for an action charging assault, battery, or
3 false imprisonment.

4 (3) The period of limitations is 5 years for an action
5 charging assault or battery brought by a person who has been
6 assaulted or battered by his or her spouse or former spouse, an
7 individual with whom he or she has had a child in common, or a
8 person with whom he or she resides or formerly resided. This
9 limitation applies to causes of action arising on or after February
10 17, 2000 and to causes of action in which the period of limitations
11 described in subsection (2) has not already expired as of February
12 17, 2000.

13 (4) The period of limitations is 5 years for an action
14 charging assault and battery brought by a person who has been
15 assaulted or battered by an individual with whom he or she has or
16 has had a dating relationship. This limitation applies to causes of
17 action arising on or after January 1, 2003 and to causes of action
18 in which the period of limitations described in subsection (2) has
19 not already expired as of January 1, 2003.

20 (5) The period of limitations is 2 years for an action
21 charging malicious prosecution.

22 (6) Except as otherwise provided in this chapter, the period
23 of limitations is 2 years for an action charging malpractice.

24 (7) The period of limitations is 2 years for an action against
25 a sheriff charging misconduct or neglect of office by the sheriff
26 or the sheriff's deputies.

27 (8) The period of limitations is 2 years after the expiration

1 of the year for which a constable was elected for actions based on
2 the constable's negligence or misconduct as constable.

3 (9) The period of limitations is 1 year for an action charging
4 libel or slander.

5 (10) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE**
6 period of limitations is 3 years after the time of the death or
7 injury for all ~~other~~ actions to recover damages for the death of
8 a person, or for injury to a person or property.

9 (11) The period of limitations is 5 years for an action to
10 recover damages for injury to a person or property brought by a
11 person who has been assaulted or battered by his or her spouse or
12 former spouse, an individual with whom he or she has had a child in
13 common, or a person with whom he or she resides or formerly
14 resided. This limitation applies to causes of action arising on or
15 after February 17, 2000 and to causes of action in which the period
16 of limitations described in subsection (10) has not already expired
17 as of February 17, 2000.

18 (12) The period of limitations is 5 years for an action to
19 recover damages for injury to a person or property brought by a
20 person who has been assaulted or battered by an individual with
21 whom he or she has or has had a dating relationship. This
22 limitation applies to causes of action arising on or after January
23 1, 2003 and to causes of action in which the period of limitations
24 described in subsection (2) has not already expired as of January
25 1, 2003.

26 (13) The period of limitations is 3 years for a products
27 liability action. However, in the case of a product that has been

1 in use for not less than 10 years, the plaintiff, in proving a
2 prima facie case, shall be required to do so without benefit of any
3 presumption.

4 (14) THE PERIOD OF LIMITATIONS FOR A CAUSE OF ACTION BASED ON
5 DRUG PRODUCT LIABILITY THAT WAS BARRED BY SECTION 2946(5), AS ADDED
6 BY 1995 PA 249, AND THAT ACCRUED ON OR AFTER JANUARY 1, 2000 AND
7 BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
8 SUBSECTION IS 3 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
9 ACT THAT ADDED THIS SUBSECTION.

10 (15) ~~-(14)-~~ The period of limitations for an action against a
11 state licensed architect, professional engineer, land surveyor, or
12 contractor based on an improvement to real property shall be as
13 provided in section 5839.

14 (16) ~~-(15)-~~ As used in this section, "dating relationship"
15 means frequent, intimate associations primarily characterized by
16 the expectation of affectional involvement. Dating relationship
17 does not include a casual relationship or an ordinary
18 fraternization between 2 individuals in a business or social
19 context.