

SENATE BILL No. 1149

March 15, 2006, Introduced by Senator PATTERSON and referred to the Committee on 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 an
2 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
5 professional who the plaintiff's attorney reasonably believes meets
6 the requirements for an expert witness under section 2169. The
7 affidavit of merit shall certify that the health professional has

1 reviewed the notice and all medical records supplied to him or her
2 by the plaintiff's attorney concerning the allegations contained in
3 the notice and shall contain a statement of each of the following:

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

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

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

11 (d) The manner in which the breach of the standard of practice
12 or care was the proximate cause of the injury alleged in the
13 notice.

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

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

24 **(4) SUBJECT TO SUBSECTION (7) AND EXCEPT FOR A FORMAL DEFECT**
25 **TO WHICH SUBSECTION (6) APPLIES, A DEFENDANT WHO WISHES TO**
26 **CHALLENGE AN AFFIDAVIT OF MERIT FILED UNDER THIS SECTION BECAUSE OF**
27 **A FORMAL DEFECT SHALL, WITHIN 91 DAYS AFTER THE AFFIDAVIT IS SERVED**

1 ON THE DEFENDANT, FILE WITH THE COURT AND SERVE ON THE PLAINTIFF A
2 WRITTEN CHALLENGE STATING THE ALLEGED DEFECT WITH SUFFICIENT
3 SPECIFICITY TO GIVE THE PLAINTIFF NOTICE OF THE DEFECT. A PLAINTIFF
4 WHO IS SERVED WITH A CHALLENGE UNDER THIS SUBSECTION OR A MOTION
5 BASED ON A FORMAL DEFECT UNDER SUBSECTION (6) MAY FILE AND SERVE AN
6 AFFIDAVIT CORRECTING ONLY THE ALLEGED DEFECT WITHIN 63 DAYS AFTER
7 BEING SERVED WITH THE CHALLENGE OR MOTION. THE CORRECTING AFFIDAVIT
8 SHALL BE GIVEN BY THE SAME AFFIANT WHO GAVE THE ORIGINAL AFFIDAVIT
9 UNLESS THE ORIGINAL AFFIANT HAS BECOME UNABLE TO GIVE AN AFFIDAVIT
10 BECAUSE OF DEATH OR DISABILITY. THE CORRECTING AFFIDAVIT RELATES
11 BACK TO THE DATE THE ORIGINAL AFFIDAVIT WAS FILED UNLESS OTHERWISE
12 ORDERED BY THE COURT.

13 (5) SUBJECT TO SUBSECTION (7), A DEFENDANT WHO WISHES TO
14 CHALLENGE AN AFFIDAVIT OF MERIT THAT HAS BEEN CHALLENGED UNDER
15 SUBSECTION (4) AND NOT CORRECTED OR AN AFFIDAVIT THAT HAS BEEN
16 CORRECTED UNDER SUBSECTION (4), BECAUSE OF A FORMAL DEFECT, SHALL
17 FILE A MOTION CHALLENGING THE AFFIDAVIT NOT LATER THAN 21 DAYS
18 AFTER THE CORRECTED AFFIDAVIT IS SERVED OR, IF A CORRECTED
19 AFFIDAVIT IS NOT SERVED, 21 DAYS AFTER THE TIME TO SERVE THE
20 CORRECTED AFFIDAVIT UNDER SUBSECTION (4) HAS PASSED.

21 (6) SUBJECT TO SUBSECTION (7), A DEFENDANT WHO WISHES TO
22 CHALLENGE AN AFFIDAVIT OF MERIT FILED UNDER THIS SECTION BECAUSE OF
23 A SUBSTANTIVE DEFECT OR A FORMAL DEFECT THAT THE DEFENDANT FOR GOOD
24 CAUSE DID NOT DISCOVER BEFORE THE TIME FOR SERVING A CHALLENGE
25 UNDER SUBSECTION (4) SHALL FILE A MOTION CHALLENGING THE DEFECT NOT
26 LATER THAN 35 DAYS AFTER THE ORDERED CLOSE OF DISCOVERY IN THE
27 ACTION OR 35 DAYS AFTER THE COMPLETION OF THE DEPOSITION OF THE

1 AFFIANT, WHICHEVER IS LATER. THE TIME TO CHALLENGE AN AFFIDAVIT OF
2 MERIT UNDER THIS SUBSECTION MAY BE EXTENDED BY THE PARTIES IN A
3 WRITTEN STIPULATION FILED WITH THE COURT OR BY ORDER OF THE COURT
4 ON A SHOWING OF GOOD CAUSE. A FORMAL DEFECT DESCRIBED IN THIS
5 SUBSECTION MAY BE CORRECTED UNDER SUBSECTION (4). A SUBSTANTIVE
6 DEFECT MAY NOT BE CORRECTED UNDER SUBSECTION (4).

7 (7) AN AFFIDAVIT OF MERIT FILED UNDER THIS SECTION MAY BE
8 CHALLENGED AT ANY TIME FOR A DEFECT RESULTING FROM THE INTENTIONAL
9 MISCONDUCT OF THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY. A DEFECT
10 DESCRIBED IN THIS SUBSECTION MAY NOT BE CORRECTED UNDER SUBSECTION
11 (4).

12 (8) IF AN AFFIDAVIT REQUIRED BY THIS SECTION IS TAKEN BEFORE A
13 NOTARY PUBLIC OR JUSTICE OF THE PEACE IN ANOTHER STATE, IT IS NOT
14 NECESSARY THAT THE SIGNATURE AND OFFICIAL STATUS OF THE NOTARY
15 PUBLIC OR JUSTICE OF THE PEACE BE CERTIFIED BY THE CLERK OF A COURT
16 AS REQUIRED BY SECTION 2102(4).

17 (9) AS USED IN THIS SECTION:

18 (A) "FORMAL DEFECT" MEANS A DEFECT TO WHICH 1 OR BOTH OF THE
19 FOLLOWING APPLY:

20 (i) THE DEFECT IS IN THE NOTARIZATION OF THE AFFIDAVIT.

21 (ii) THE DEFECT RESULTS FROM AN INADVERTENT CLERICAL ERROR, A
22 TYPOGRAPHICAL, GRAMMATICAL, OR PUNCTUATION ERROR, IMPROPER
23 PAGINATION, OR MISSING PAGES, INCLUDING A PAGE WITH A SIGNATURE IF
24 THE SIGNED PAGE WAS IN EXISTENCE AT THE TIME THE AFFIDAVIT WAS
25 REQUIRED TO BE FILED UNDER SUBSECTION (1), (2), OR (3).

26 (B) "SUBSTANTIVE DEFECT" MEANS A DEFECT THAT IS NOT A FORMAL
27 DEFECT.

1 Enacting section 1. This amendatory act does not take effect
2 unless Senate Bill No. 1150

3 of the 93rd Legislature is enacted into law.

4 Enacting section 2. This amendatory act applies only to civil
5 actions filed on or after the effective date of this amendatory
6 act.