

SENATE BILL No. 1401

September 5, 2006, Introduced by Senators GARCIA and GOSCHKA and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2912i.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2912I. (1) SUBJECT TO SUBSECTION (2), THE PLAINTIFF IN AN
2 ACTION ALLEGING MALPRACTICE OR NEGLIGENCE AGAINST AN ARCHITECT OR
3 ENGINEER SHALL FILE WITH THE COMPLAINT AN AFFIDAVIT OF MERIT SIGNED
4 BY AN INDIVIDUAL WHO THE PLAINTIFF OR, IF THE PLAINTIFF IS
5 REPRESENTED BY AN ATTORNEY, THE PLAINTIFF'S ATTORNEY REASONABLY
6 BELIEVES MEETS THE REQUIREMENTS OF SUBSECTION (3). THE AFFIANT
7 SHALL STATE IN THE AFFIDAVIT OF MERIT ALL OF THE FOLLOWING:

8 (A) THAT HE OR SHE HAS REVIEWED ALL RECORDS SUPPLIED BY THE

1 PLAINTIFF OR THE PLAINTIFF'S ATTORNEY CONCERNING THE CONDUCT THAT
2 IS THE SUBJECT OF THE AFFIDAVIT.

3 (B) THAT HE OR SHE HAS REVIEWED THE APPLICABLE STANDARD OF
4 PRACTICE OR CARE.

5 (C) THAT IT IS HIS OR HER OPINION THAT THE APPLICABLE STANDARD
6 OF PRACTICE OR CARE WAS BREACHED BY THE ARCHITECT OR ENGINEER.

7 (D) A DETAILED DESCRIPTION OF THE ACTIONS THAT SHOULD HAVE
8 BEEN TAKEN OR OMITTED BY THE ARCHITECT OR ENGINEER TO HAVE COMPLIED
9 WITH THE APPLICABLE STANDARD OF PRACTICE OR CARE.

10 (E) THE MANNER IN WHICH THE BREACH OF THE STANDARD OF PRACTICE
11 OR CARE WAS THE PROXIMATE CAUSE OF THE ALLEGED INJURY TO THE
12 PLAINTIFF.

13 (2) ON MOTION OF A PARTY FOR GOOD CAUSE SHOWN, THE COURT IN
14 WHICH THE COMPLAINT IS FILED MAY GRANT THE PLAINTIFF AN ADDITIONAL
15 28 DAYS IN WHICH TO FILE THE AFFIDAVIT REQUIRED UNDER SUBSECTION
16 (1).

17 (3) TO QUALIFY TO SIGN AN AFFIDAVIT UNDER SUBSECTION (1), AN
18 INDIVIDUAL SHALL MEET BOTH OF THE FOLLOWING REQUIREMENTS:

19 (A) BE LICENSED IN THIS STATE OR ANOTHER STATE AS AN ARCHITECT
20 OR ENGINEER, AS APPLICABLE.

21 (B) DURING THE YEAR IMMEDIATELY PRECEDING THE DATE OF THE
22 CONDUCT THAT IS THE SUBJECT OF THE AFFIDAVIT, HAVE DEVOTED A
23 MAJORITY OF HIS OR HER PROFESSIONAL TIME TO 1 OR MORE OF THE
24 FOLLOWING:

25 (i) THE ACTIVE PRACTICE OF ARCHITECTURE OR ENGINEERING, AS
26 APPLICABLE.

27 (ii) THE INSTRUCTION OF STUDENTS IN AN ACCREDITED ARCHITECTURE

1 OR ENGINEERING SCHOOL, AS APPLICABLE, OR ACCREDITED PROGRAM THAT
2 PROVIDES STUDENTS WITH PRACTICAL EXPERIENCE IN ARCHITECTURE OR
3 ENGINEERING, AS APPLICABLE.

4 (iii) THE CONDUCT OF RESEARCH IN ARCHITECTURE OR ENGINEERING, AS
5 APPLICABLE.

6 (4) AS USED IN THIS SECTION:

7 (A) "ARCHITECT" MEANS AN INDIVIDUAL WHO IS LICENSED AS AN
8 ARCHITECT UNDER CHAPTER 20 OF THE OCCUPATIONAL CODE, 1980 PA 299,
9 MCL 339.2001 TO 339.2014.

10 (B) "ENGINEER" MEANS AN INDIVIDUAL WHO IS LICENSED AS A
11 PROFESSIONAL ENGINEER UNDER CHAPTER 20 OF THE OCCUPATIONAL CODE,
12 1980 PA 299, MCL 339.2001 TO 339.2014.