

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1296

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 5805 and 5838 (MCL 600.5805 and 600.5838),
section 5805 as amended by 2011 PA 162 and section 5838 as amended
by 1986 PA 178, and by adding section 5838b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

6 (2) Subject to subsections (3) and (4), the period of
7 limitations is 2 years for an action charging assault, battery, or

1 false imprisonment.

2 (3) The period of limitations is 5 years for an action
3 charging assault or battery brought by a person who has been
4 assaulted or battered by his or her spouse or former spouse, an
5 individual with whom he or she has had a child in common, or a
6 person with whom he or she resides or formerly resided.

7 (4) The period of limitations is 5 years for an action
8 charging assault and battery brought by a person who has been
9 assaulted or battered by an individual with whom he or she has or
10 has had a dating relationship.

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

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

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

18 (8) The period of limitations is 2 years after the expiration
19 of the year for which a constable was elected for actions based on
20 the constable's negligence or misconduct as constable.

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

23 (10) Except as otherwise provided in this section, the period
24 of limitations is 3 years after the time of the death or injury for
25 all actions to recover damages for the death of a person, or for
26 injury to a person or property.

27 (11) The period of limitations is 5 years for an action to

1 recover damages for injury to a person or property brought by a
2 person who has been assaulted or battered by his or her spouse or
3 former spouse, an individual with whom he or she has had a child in
4 common, or a person with whom he or she resides or formerly
5 resided.

6 (12) The period of limitations is 5 years for an action to
7 recover damages for injury to a person or property brought by a
8 person who has been assaulted or battered by an individual with
9 whom he or she has or has had a dating relationship.

10 (13) The period of limitations is 3 years for a products
11 liability action. However, in the case of a product that has been
12 in use for not less than 10 years, the plaintiff, in proving a
13 prima facie case, shall be required to do so without benefit of any
14 presumption.

15 (14) An action against a state licensed architect or
16 professional engineer or licensed professional surveyor arising
17 from professional services rendered is an action charging
18 malpractice subject to the period of limitation contained in
19 subsection (6).

20 (15) The periods of limitation under this section are subject
21 to ~~the~~ **ANY** applicable period of repose established in section
22 **5838A, 5838B, OR 5839**.

23 (16) The amendments to this section made by ~~the~~ 2011
24 ~~amendatory act that added this subsection~~ **PA 162** apply to causes of
25 action that accrue on or after ~~the effective date of that~~
26 ~~amendatory act~~ **JANUARY 1, 2012**.

27 (17) As used in this section, "dating relationship" means

1 frequent, intimate associations primarily characterized by the
2 expectation of affectional involvement. Dating relationship does
3 not include a casual relationship or an ordinary fraternization
4 between 2 individuals in a business or social context.

5 Sec. 5838. (1) Except as otherwise provided in section 5838a
6 **OR 5838B**, a claim based on the malpractice of a person who is, or
7 holds himself or herself out to be, a member of a state licensed
8 profession accrues at the time that person discontinues serving the
9 plaintiff in a professional or pseudoprofessional capacity as to
10 the matters out of which the claim for malpractice arose,
11 regardless of the time the plaintiff discovers or otherwise has
12 knowledge of the claim.

13 (2) Except as otherwise provided in section 5838a **OR 5838B**, an
14 action involving a claim based on malpractice may be commenced at
15 any time within the applicable period prescribed in sections 5805
16 or 5851 to 5856, or within 6 months after the plaintiff discovers
17 or should have discovered the existence of the claim, whichever is
18 later. The **PLAINTIFF HAS THE** burden of proving that the plaintiff
19 neither discovered nor should have discovered the existence of the
20 claim at least 6 months before the expiration of the period
21 otherwise applicable to the claim. ~~shall be on the plaintiff. A~~
22 malpractice action ~~which~~ **THAT** is not commenced within the time
23 prescribed by this subsection is barred.

24 **SEC. 5838B. (1) AN ACTION FOR LEGAL MALPRACTICE AGAINST AN**
25 **ATTORNEY-AT-LAW OR A LAW FIRM SHALL NOT BE COMMENCED AFTER**
26 **WHICHEVER OF THE FOLLOWING IS EARLIER:**

27 **(A) THE EXPIRATION OF THE APPLICABLE PERIOD OF LIMITATIONS**

1 UNDER THIS CHAPTER.

2 (B) SIX YEARS AFTER THE DATE OF THE ACT OR OMISSION THAT IS
3 THE BASIS FOR THE CLAIM.

4 (2) A LEGAL MALPRACTICE ACTION THAT IS NOT COMMENCED WITHIN
5 THE TIME PRESCRIBED BY SUBSECTION (1) IS BARRED.

6 (3) AS USED IN THIS SECTION:

7 (A) "ATTORNEY-AT-LAW" MEANS AN INDIVIDUAL LICENSED TO PRACTICE
8 LAW IN THIS STATE OR ELSEWHERE.

9 (B) "LAW FIRM" MEANS A PERSON THAT IS PRIMARILY ENGAGED IN THE
10 PRACTICE OF LAW, REGARDLESS OF WHETHER ORGANIZED AS A SOLE
11 PROPRIETORSHIP, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP,
12 PROFESSIONAL LIMITED LIABILITY COMPANY, PROFESSIONAL CORPORATION,
13 OR OTHER BUSINESS ENTITY. LAW FIRM INCLUDES A LEGAL SERVICES
14 ORGANIZATION.