

# SENATE BILL No. 1296

September 20, 2012, Introduced by Senator SCHUITMAKER and referred to the Committee on Judiciary.

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

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1           (2) Except as otherwise provided in section 5838a **OR 5838B**, an  
2 action involving a claim based on malpractice may be commenced at  
3 any time within the applicable period prescribed in sections 5805  
4 or 5851 to 5856, or within 6 months after the plaintiff discovers  
5 or should have discovered the existence of the claim, whichever is  
6 later. The **PLAINTIFF HAS THE** burden of proving that the plaintiff  
7 neither discovered nor should have discovered the existence of the  
8 claim at least 6 months before the expiration of the period  
9 otherwise applicable to the claim. ~~shall be on the plaintiff. A~~  
10 malpractice action ~~which~~ **THAT** is not commenced within the time  
11 prescribed by this subsection is barred.

12           **SEC. 5838B. (1) AN ACTION FOR LEGAL MALPRACTICE AGAINST AN**  
13 **ATTORNEY-AT-LAW, LICENSED IN THIS STATE OR ELSEWHERE, OR A LAW FIRM**  
14 **SHALL NOT BE COMMENCED LATER THAN 6 YEARS AFTER THE DATE OF THE ACT**  
15 **OR OMISSION THAT IS THE BASIS FOR THE CLAIM.**

16           (2) AS USED IN THIS SECTION, "LAW FIRM" MEANS EITHER OF THE  
17 FOLLOWING:

18           (A) AN ORGANIZATION THAT IS ENGAGED IN THE PRIVATE PRACTICE OF  
19 LAW, INCLUDING A PARTNERSHIP, SOLE PRACTITIONER WITH 1 OR MORE  
20 HIRED ASSOCIATES, PROFESSIONAL LIMITED LIABILITY PARTNERSHIP,  
21 PROFESSIONAL LIMITED LIABILITY COMPANY, OR PROFESSIONAL  
22 CORPORATION.

23           (B) A LEGAL SERVICES ORGANIZATION.