

# HOUSE BILL No. 5672

May 23, 2012, Introduced by Reps. MacGregor, Johnson, LeBlanc and Womack and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 2912e, 5852, and 6013 (MCL 600.2912e, 600.5852, and 600.6013), section 2912e as amended by 1993 PA 78, section 5852 as amended by 1988 PA 221, and section 6013 as amended by 2002 PA 77.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 2912e. (1) In an action alleging medical malpractice,  
2           within 21 days after the plaintiff has filed an affidavit in  
3           compliance with section 2912d, the defendant shall file an answer  
4           to the complaint. Subject to subsection (2), the defendant or, if  
5           the defendant is represented by an attorney, the defendant's  
6           attorney shall file, not later than 91 days after the plaintiff or  
7           the plaintiff's attorney ~~files~~**SERVES** the affidavit required under

1 section 2912d, an affidavit of meritorious defense signed by a  
2 health professional who the defendant's attorney reasonably  
3 believes meets the requirements for an expert witness under section  
4 2169. The affidavit of meritorious defense shall certify that the  
5 health professional has reviewed the complaint and all medical  
6 records supplied to him or her by the defendant's attorney  
7 concerning the allegations contained in the complaint and shall  
8 contain a statement of each of the following:

9 (a) The factual basis for each defense to the claims made  
10 against the defendant in the complaint.

11 (b) The standard of practice or care that the health  
12 professional or health facility named as a defendant in the  
13 complaint claims to be applicable to the action and that the health  
14 professional or health facility complied with that standard.

15 (c) The manner in which it is claimed by the health  
16 professional or health facility named as a defendant in the  
17 complaint that there was compliance with the applicable standard of  
18 practice or care.

19 (d) The manner in which the health professional or health  
20 facility named as a defendant in the complaint contends that the  
21 alleged injury or alleged damage to the plaintiff is not related to  
22 the care and treatment rendered.

23 (2) If the plaintiff in an action alleging medical malpractice  
24 fails to allow access to medical records as required under section  
25 ~~2912b(6)~~, **2912B(5)**, the affidavit required under subsection (1) may  
26 be filed within 91 days after filing an answer to the complaint.

27 Sec. 5852. (1) If a person dies before the period of

1 limitations has run or within 30 days after the period of  
2 limitations has run, an action ~~which~~ **THAT** survives by law may be  
3 commenced by the personal representative of the deceased person at  
4 any time within 2 years after letters of authority are issued  
5 although the period of limitations has run. ~~But an action shall not~~  
6 ~~be brought under this provision unless the personal representative~~  
7 ~~commences it within 3 years after the period of limitations has~~  
8 ~~run.~~

9 (2) IF THE ACTION THAT SURVIVES BY LAW IS AN ACTION ALLEGING  
10 MEDICAL MALPRACTICE, THE 2-YEAR PERIOD UNDER SUBSECTION (1) RUNS  
11 FROM THE DATE LETTERS OF AUTHORITY ARE ISSUED TO THE FIRST PERSONAL  
12 REPRESENTATIVE OF AN ESTATE. EXCEPT AS PROVIDED IN SUBSECTION (3),  
13 THE ISSUANCE OF SUBSEQUENT LETTERS OF AUTHORITY DOES NOT ENLARGE  
14 THE TIME WITHIN WHICH THE ACTION MAY BE COMMENCED.

15 (3) IF A PERSONAL REPRESENTATIVE DIES OR IS ADJUDGED BY A  
16 COURT TO BE LEGALLY INCAPACITATED WITHIN 2 YEARS AFTER HIS OR HER  
17 LETTERS ARE ISSUED, THE SUCCESSOR PERSONAL REPRESENTATIVE MAY  
18 COMMENCE AN ACTION ALLEGING MEDICAL MALPRACTICE THAT SURVIVES BY  
19 LAW WITHIN 1 YEAR AFTER THE PERSONAL REPRESENTATIVE DIED OR WAS  
20 ADJUDGED BY A COURT TO BE LEGALLY INCAPACITATED.

21 (4) NOTWITHSTANDING SUBSECTIONS (1) TO (3), AN ACTION SHALL  
22 NOT BE COMMENCED UNDER THIS SECTION LATER THAN 3 YEARS AFTER THE  
23 PERIOD OF LIMITATIONS HAS RUN.

24 Sec. 6013. (1) Interest is allowed on a money judgment  
25 recovered in a civil action, as provided in this section. However,  
26 for complaints filed on or after October 1, 1986, interest is not  
27 allowed on future damages from the date of filing the complaint to

1 the date of entry of the judgment. As used in this subsection,  
2 "future damages" means that term as defined in section 6301.

3 (2) For complaints filed before June 1, 1980, in an action  
4 involving other than a written instrument having a rate of interest  
5 exceeding 6% per year, the interest on the judgment is calculated  
6 from the date of filing the complaint to June 1, 1980, at the rate  
7 of 6% per year and on and after June 1, 1980, to the date of  
8 satisfaction of the judgment at the rate of 12% per year compounded  
9 annually.

10 (3) For a complaint filed before June 1, 1980, in an action  
11 involving a written instrument having a rate of interest exceeding  
12 6% per year, the interest on the judgment is calculated from the  
13 date of filing the complaint to the date of satisfaction of the  
14 judgment at the rate specified in the instrument if the rate was  
15 legal at the time the instrument was executed. However, the rate  
16 after the date judgment is entered shall not exceed either of the  
17 following:

18 (a) Seven percent per year compounded annually for a period of  
19 time between the date judgment is entered and the date of  
20 satisfaction of the judgment that elapses before June 1, 1980.

21 (b) Thirteen percent per year compounded annually for a period  
22 of time between the date judgment is entered and the date of  
23 satisfaction of the judgment that elapses after May 31, 1980.

24 (4) For a complaint filed on or after June 1, 1980, but before  
25 January 1, 1987, interest is calculated from the date of filing the  
26 complaint to the date of satisfaction of the judgment at the rate  
27 of 12% per year compounded annually unless the judgment is rendered

1 on a written instrument having a higher rate of interest. In that  
2 case, interest is calculated at the rate specified in the  
3 instrument if the rate was legal at the time the instrument was  
4 executed. The rate **UNDER THIS SUBSECTION** shall not exceed 13% per  
5 year compounded annually after the date judgment is entered.

6 (5) Except as provided in subsection (6), for a complaint  
7 filed on or after January 1, 1987, but before July 1, 2002, if a  
8 judgment is rendered on a written instrument, interest is  
9 calculated from the date of filing the complaint to the date of  
10 satisfaction of the judgment at the rate of 12% per year compounded  
11 annually, unless the instrument has a higher rate of interest. In  
12 that case, interest shall be calculated at the rate specified in  
13 the instrument if the rate was legal at the time the instrument was  
14 executed. The rate **UNDER THIS SUBSECTION** shall not exceed 13% per  
15 year compounded annually after the date judgment is entered.

16 (6) For a complaint filed on or after January 1, 1987, but  
17 before July 1, 2002, if the civil action has not resulted in a  
18 final, nonappealable judgment as of July 1, 2002, and if a judgment  
19 is or has been rendered on a written instrument that does not  
20 evidence indebtedness with a specified interest rate, interest is  
21 calculated as provided in subsection (8).

22 (7) For a complaint filed on or after July 1, 2002, if a  
23 judgment is rendered on a written instrument evidencing  
24 indebtedness with a specified interest rate, interest is calculated  
25 from the date of filing the complaint to the date of satisfaction  
26 of the judgment at the rate specified in the instrument if the rate  
27 was legal at the time the instrument was executed. If the rate in

1 the written instrument is a variable rate, interest shall be fixed  
2 at the rate in effect under the instrument at the time the  
3 complaint is filed. The rate under this subsection shall not exceed  
4 13% per year compounded annually.

5 (8) Except as otherwise provided in subsections (5) and (7)  
6 and subject to subsection (13), for complaints filed on or after  
7 January 1, 1987, interest on a money judgment recovered in a civil  
8 action is calculated at 6-month intervals from the date of filing  
9 the complaint at a rate of interest equal to 1% plus the average  
10 interest rate paid at auctions of 5-year United States treasury  
11 notes during the 6 months immediately preceding July 1 and January  
12 1, as certified by the state treasurer, and compounded annually,  
13 according to this section. Interest under this subsection is  
14 calculated on the entire amount of the money judgment, including  
15 attorney fees and other costs. **IN AN ACTION FOR MEDICAL**  
16 **MALPRACTICE, INTEREST UNDER THIS SUBSECTION ON COSTS OR ATTORNEY**  
17 **FEES AWARDED UNDER A STATUTE OR COURT RULE IS NOT CALCULATED FOR**  
18 **ANY PERIOD BEFORE THE ENTRY OF THE JUDGMENT.** The amount of interest  
19 attributable to that part of the money judgment from which attorney  
20 fees are paid is retained by the plaintiff, and not paid to the  
21 plaintiff's attorney.

22 (9) If a bona fide, reasonable written offer of settlement in  
23 a civil action based on tort is made by the party against whom the  
24 judgment is subsequently rendered and is rejected by the plaintiff,  
25 the court shall order that interest is not allowed beyond the date  
26 the bona fide, reasonable written offer of settlement is filed with  
27 the court.

1           (10) Except as otherwise provided in subsection (1) and  
2 subject to subsections (11) and (12), if a bona fide, reasonable  
3 written offer of settlement in a civil action based on tort is not  
4 made by the party against whom the judgment is subsequently  
5 rendered, or is made and is not filed with the court, the court  
6 shall order that interest be calculated from the date of filing the  
7 complaint to the date of satisfaction of the judgment.

8           (11) If a civil action is based on medical malpractice and the  
9 defendant in the medical malpractice action failed to allow access  
10 to medical records as required under section 2912b(5), the court  
11 shall order that interest be calculated from the date notice was  
12 given in compliance with section 2912b to the date of satisfaction  
13 of the judgment.

14           (12) If a civil action is based on medical malpractice and the  
15 plaintiff in the medical malpractice action failed to allow access  
16 to medical records as required under section 2912b(5), the court  
17 shall order that interest be calculated from 182 days after the  
18 date the complaint was filed to the date of satisfaction of the  
19 judgment.

20           (13) Except as otherwise provided in subsection (1), if a bona  
21 fide, reasonable written offer of settlement in a civil action  
22 based on tort is made by a plaintiff for whom the judgment is  
23 subsequently rendered and that offer is rejected and the offer is  
24 filed with the court, the court shall order that interest be  
25 calculated from the date of the rejection of the offer to the date  
26 of satisfaction of the judgment at a rate of interest equal to 2%  
27 plus the rate of interest calculated under subsection (8).

1           (14) A bona fide, reasonable written offer of settlement made  
2 according to this section that is not accepted within 21 days after  
3 the offer is made is rejected. A rejection under this subsection or  
4 otherwise does not preclude a later offer by either party.

5           (15) As used in this section:

6           (a) "Bona fide, reasonable written offer of settlement" means  
7 either of the following:

8           (i) With respect to an offer of settlement made by a defendant  
9 against whom judgment is subsequently rendered, a written offer of  
10 settlement that is not less than 90% of the amount actually  
11 received by the plaintiff in the action through judgment.

12           (ii) With respect to an offer of settlement made by a  
13 plaintiff, a written offer of settlement that is not more than 110%  
14 of the amount actually received by the plaintiff in the action  
15 through judgment.

16           (b) "Defendant" means a defendant, a counter-defendant, or a  
17 cross-defendant.

18           (c) "Party" means a plaintiff or a defendant.

19           (d) "Plaintiff" means a plaintiff, a counter-plaintiff, or a  
20 cross-plaintiff.