

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.