

HOUSE BILL NO. 5169

October 29, 2019, Introduced by Rep. Hernandez 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) Within 56 days after a request is made under**
2 **subsection (3), the plaintiff in an action or arbitration**
3 **proceeding alleging malpractice or negligence against an architect,**
4 **engineer, or surveyor shall file an affidavit of merit signed by an**



1 individual who the plaintiff or, if the plaintiff is represented by
2 an attorney, the plaintiff's attorney reasonably believes meets the
3 requirements of subsection (4). The affiant shall state in the
4 affidavit of merit all of the following:

5 (a) That he or she has reviewed all records supplied by the
6 plaintiff or the plaintiff's attorney concerning the conduct that
7 is the subject of the action or arbitration.

8 (b) That he or she has reviewed the applicable standard of
9 care.

10 (c) That it is his or her opinion that the applicable standard
11 of care was breached by the architect, engineer, or surveyor.

12 (d) The actions that should have been taken or omitted by the
13 architect, engineer, or surveyor to comply with the applicable
14 standard of care.

15 (e) That the breach of the standard of care was a proximate
16 cause of the alleged injury or damage to the plaintiff.

17 (2) In an action or arbitration described in subsection (1),
18 the court or arbitrator, on motion and a showing of good cause, may
19 grant 1 extension of time for filing an affidavit under subsection
20 (1), for not more than 56 days. A motion to extend the time for
21 filing an affidavit under subsection (1) must be filed before the
22 expiration of the original 56 days provided under subsection (1).

23 (3) A defendant in an action or arbitration proceeding
24 described in subsection (1) may request an affidavit under
25 subsection (1) within 56 days after the complaint or notice
26 requesting arbitration is served on the defendant. A defendant who
27 does not request an affidavit as provided in this subsection waives
28 the right to do so.

29 (4) To qualify to sign an affidavit under subsection (1), an



1 individual must be licensed in this state as an architect,
2 engineer, or surveyor, as applicable depending on the licensure of
3 the defendant, and be engaged in the practice of the same
4 discipline as the defendant.

5 (5) If a plaintiff fails to file an affidavit as required by
6 subsection (1), the court or arbitrator shall dismiss the action or
7 arbitration proceeding with prejudice. The plaintiff may
8 voluntarily dismiss the action or arbitration before the expiration
9 of the time for filing the affidavit as required under subsection
10 (1). A voluntary dismissal by the plaintiff under this subsection
11 is without prejudice. Any action or arbitration refiled after a
12 voluntary dismissal by the plaintiff under this subsection must be
13 filed with an affidavit that complies with subsection (1). The
14 court or arbitrator shall dismiss a refiled action or arbitration
15 proceeding that is not accompanied by an affidavit that complies
16 with subsection (1) with prejudice.

17 (6) A defendant's objection to an affidavit filed under
18 subsection (1) must be raised in a motion filed within 90 days
19 after the affidavit is served. An objection to an affidavit filed
20 under this section that is not included in a timely filed motion is
21 waived.

22 (7) If the court determines that an affidavit filed under
23 subsection (1) does not fully comply with this section, the court
24 shall allow the plaintiff 56 days to file 1 or more affidavits that
25 correct the deficiencies identified by the court. The filing of an
26 affidavit under this subsection relates back to the date of filing
27 the original complaint or notice requesting arbitration. If 1 or
28 more affidavits are filed under this subsection, the defendant may
29 renew its objections by filing a motion within 14 days after



1 service of the affidavits.

2 (8) A defendant in an action described in subsection (1) shall
3 in good faith participate in discovery in the action as required by
4 the court rules.

5 (9) An affidavit under subsection (1) is not required in an
6 action for breach of contract against an architect, engineer, or
7 surveyor that does not involve the standard of care.

8 (10) As used in this section:

9 (a) "Architect" means an individual who is licensed as an
10 architect under article 20 of the occupational code, 1980 PA 299,
11 MCL 339.2001 to 339.2014, and who is actively engaged in the
12 practice of architecture in this state. As used in subsection (1),
13 architect includes an organization in which an architect practices.

14 (b) "Defendant" includes a cross, counter, or third-party
15 defendant or respondent.

16 (c) "Engineer" means an individual who is licensed as a
17 professional engineer under article 20 of the occupational code,
18 1980 PA 299, MCL 339.2001 to 339.2014, and who is actively engaged
19 in the practice of engineering in this state. As used in subsection
20 (1), engineer includes an organization in which an engineer
21 practices.

22 (d) "Organization" means a corporation, partnership, limited
23 liability company, joint venture, or other business entity.

24 (e) "Plaintiff" includes a cross, counter, or third-party
25 plaintiff or claimant.

26 (f) "Surveyor" means an individual who is licensed as a
27 professional surveyor under article 20 of the occupational code,
28 1980 PA 299, MCL 339.2001 to 339.2014, and who is actively engaged
29 in the practice of surveying in this state. As used in subsection



1 (1), surveyor includes an organization in which a surveyor
2 practices.

3 Enacting section 1. This amendatory act takes effect 90 days
4 after the date it is enacted into law.

