

# HOUSE BILL No. 5028

July 28, 1989, Introduced by Reps. Hickner, DeMars, Porreca, Nye, Dolan, Rocca, Crandall, Gnodtke and Miller and referred to the Committee on Judiciary.

A bill to amend sections 1483, 2591, and 2912e of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," as added by Act No. 178 of the Public Acts of 1986, being sections 600.1483, 600.2591, and 600.2912e of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 1483, 2591, and 2912e of Act No. 236 of  
2 the Public Acts of 1961, as added by Act No. 178 of the Public  
3 Acts of 1986, being sections 600.1483, 600.2591, and 600.2912e of  
4 the Michigan Compiled Laws, are amended to read as follows:

5       Sec. 1483. (1) ~~IN~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSEC-  
6 TION (2), IN an action for damages alleging medical malpractice  
7 against a person or party specified in section 5838a, damages for  
8 noneconomic loss ~~which~~ THAT exceeds ~~\$225,000.00~~ \$250,000.00

1 shall not be awarded. ~~unless 1 or more of the following~~  
2 ~~circumstances exist:~~

3 ~~(a) There has been a death.~~

4 ~~(b) There has been an intentional tort.~~

5 ~~(c) A foreign object was wrongfully left in the body of the~~  
6 ~~patient.~~

7 ~~(d) The injury involves the reproductive system of the~~  
8 ~~patient.~~

9 ~~(e) The discovery of the existence of the claim was pre-~~  
10 ~~vented by the fraudulent conduct of a health care provider.~~

11 ~~(f) A limb or organ of the patient was wrongfully removed.~~

12 ~~(g) The patient has lost a vital bodily function.~~

13 (2) IF A PERSON OR PARTY SPECIFIED IN SECTION 5838A AGAINST  
14 WHOM MEDICAL MALPRACTICE IS ALLEGED IS FOUND BY THE TRIER OF FACT  
15 TO HAVE BEEN GROSSLY NEGLIGENT, SUBSECTION (1) DOES NOT APPLY  
16 WITH RESPECT TO THAT PERSON OR PARTY.

17 (3) ~~(2)~~ In awarding damages in an action alleging medical  
18 malpractice, the trier of fact shall itemize damages into eco-  
19 nomic and noneconomic damages.

20 (4) IF ECONOMIC DAMAGES CANNOT READILY BE ASCERTAINED BY THE  
21 TRIER OF FACT, THE ECONOMIC DAMAGES SHALL BE CALCULATED BASED ON  
22 AN AMOUNT THAT IS EQUAL TO THE STATE AVERAGE MEDIAN FAMILY INCOME  
23 AS REPORTED IN THE LATEST FEDERAL DECENNIAL CENSUS PRECEDING THE  
24 TIME AS OF WHICH ECONOMIC DAMAGES ARE TO BE DETERMINED AND AS  
25 ADJUSTED AND CERTIFIED BY THE STATE TREASURER.

26 (5) AS USED IN THIS SECTION:

1 (A) "ECONOMIC DAMAGES" INCLUDES, BUT IS NOT LIMITED TO,  
 2 DAMAGES FOR COSTS FOR REHABILITATION AND MEDICAL CARE THAT WILL  
 3 BE INCURRED BY THE PARTY BRINGING THE ACTION FOR DAMAGES ALLEGING  
 4 MEDICAL MALPRACTICE. ECONOMIC DAMAGES DOES NOT INCLUDE COSTS AND  
 5 FEES AWARDED UNDER SECTION 2591.

6 (b) ~~(3)~~ "Noneconomic loss" means damages or loss due to  
 7 pain, suffering, inconvenience, physical impairment, physical  
 8 disfigurement, or other noneconomic loss. NONECONOMIC LOSS DOES  
 9 NOT INCLUDE COSTS AND FEES AWARDED UNDER SECTION 2591.

10 (6) ~~(4)~~ The limitation on noneconomic damages set forth in  
 11 subsection (1) AND THE AMOUNT UPON WHICH THE CALCULATION OF ECO-  
 12 NOMIC DAMAGES IS BASED UNDER SUBSECTION (4) shall be increased by  
 13 an amount determined by the state treasurer at the end of each  
 14 calendar year to reflect the cumulative annual percentage  
 15 increase in the consumer price index. As used in this subsec-  
 16 tion, "consumer price index" means the most comprehensive index  
 17 of consumer prices available for this state from the bureau of  
 18 labor statistics of the United States department of labor.

19 Sec. 2591. (1) ~~Upon motion of any party, if a court finds~~  
 20 ~~that a civil action or defense to a civil action was frivolous,~~  
 21 ~~the~~ THE court that conducts ~~the~~ A civil action shall award to  
 22 the prevailing party the costs and fees incurred by that party in  
 23 connection with the civil action by assessing the costs and fees  
 24 against the nonprevailing party and ~~their~~ THE NONPREVAILING  
 25 PARTY'S attorney IF 1 OF THE FOLLOWING CONDITIONS IS MET:

26 (A) THE ACTION IS NOT A MEDICAL MALPRACTICE ACTION, A PARTY  
 27 TO THE ACTION MOVES FOR THE AWARD OF COSTS AND FEES, AND THE

1 COURT FINDS THAT THE CIVIL ACTION OR DEFENSE TO THE CIVIL ACTION  
2 WAS FRIVOLOUS.

3 (B) THE ACTION IS A MEDICAL MALPRACTICE ACTION.

4 (2) The amount of costs and fees awarded under this section  
5 shall include all reasonable costs actually incurred by the pre-  
6 vailing party and ~~any~~ costs allowed by law or by court rule,  
7 including, BUT NOT LIMITED TO, court costs and reasonable attor-  
8 ney fees.

9 (3) As used in this section:

10 (a) "Frivolous" means that ~~at least~~ 1 OR MORE of the fol-  
11 lowing conditions is met:

12 (i) The party's primary purpose in initiating the action or  
13 asserting the defense was to harass, embarrass, or injure the  
14 prevailing party.

15 (ii) The party had no reasonable basis to believe that the  
16 facts underlying that party's legal position were in fact true.

17 (iii) The party's legal position was devoid of arguable  
18 legal merit.

19 (b) "Prevailing party" means a party who wins on the entire  
20 record.

21 Sec. 2912e. (1) In an action alleging medical malpractice,  
22 within 21 days after the plaintiff has furnished security or  
23 filed an affidavit in compliance with section 2912d, the  
24 defendant shall file an answer to the complaint. Within 91 days  
25 after filing an answer, the defendant shall furnish security for  
26 costs or an affidavit as required by this section.

1 (2) Subject to subsections (4) and (5), the defendant in an  
2 action alleging medical malpractice ~~shall be~~ IS in compliance  
3 with subsection (1) if the defendant posts a bond with surety or  
4 any other equivalent security approved by the court, including  
5 cash in an escrow account, for costs in an amount of \$2,000.00  
6 within 91 days after the filing of the answer.

7 (3) The defendant in an action alleging medical malpractice  
8 ~~shall be~~ IS in compliance with subsection (1) if the  
9 defendant's attorney or, if the defendant is not represented by  
10 an attorney, the defendant files an affidavit attesting that the  
11 attorney signing the answer ~~—~~ or, IF the defendant if not rep-  
12 resented by an attorney, THE DEFENDANT has obtained a written  
13 opinion from a licensed physician, dentist, or other appropriate  
14 licensed health care provider other than the defendant that there  
15 is a meritorious defense to the claims in the complaint made  
16 against the defendant within 91 days after the filing of the  
17 answer.

18 (4) If, upon expiration of the ninety-first day after the  
19 answer has been filed ~~—~~ or the expiration of the extension  
20 period described in subsection (5), whichever is later, the  
21 defendant has failed to comply with subsection (2) or (3), then  
22 the court, upon motion of any party or upon the court's own  
23 motion, shall increase the amount of security required by subsec-  
24 tion (2). If the defendant fails to post the increased security,  
25 the court, upon motion and for good cause shown, may strike the  
26 answer and enter a default judgment against that defendant.

1       (5) The court, upon motion of ~~any~~ A party and for good  
2 cause shown, may extend the time for the defendant to comply with  
3 subsection (2) or (3) for a period not to exceed 91 days.

4       (6) Discovery concerning the affidavit, including the writ-  
5 ten opinion and the identity of the health care provider who sup-  
6 plied the opinion shall NOT be allowed. ~~only upon application~~  
7 ~~under section 2591 by a prevailing party for costs and attorney~~  
8 ~~fees after judgment is entered.~~