

SENATE BILL No. 4

January 11, 1989, Introduced by Senators N. SMITH and DILLINGHAM
and referred to the Committee on Commerce and Technology.

A bill to amend sections 3051 and 3057 of Act No. 218 of the
Public Acts of 1956, entitled as amended
"The insurance code of 1956,"
being sections 500.3051 and 500.3057 of the Michigan Compiled
Laws; and to add sections 3455 and 3612.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3051 and 3057 of Act No. 218 of the
2 Public Acts of 1956, being sections 500.3051 and 500.3057 of the
3 Michigan Compiled Laws, are amended and sections 3455 and 3612
4 are added to read as follows:

5 Sec. 3051. As used in this chapter:

6 (a) "Advisory committee" means the arbitration advisory
7 committee.

8 (b) "Health care office" means a facility in which medical
9 care is provided by a health care provider but which is not

1 separately licensed as a health care facility. Health care
2 office may also include, upon the designation by the commission-
3 er, a health care facility licensed as such, which is primarily
4 designed for delivery of the type of medical care that is custom-
5 arily provided in the office of a health care provider. The com-
6 missioner may by rule designate such facilities or character of
7 treatment within such a facility as a health care office.

8 (c) "Health care provider" means a person, partnership, or
9 corporation lawfully engaged in the practice of medicine, sur-
10 gery, dentistry, podiatry, optometry, chiropractic, or nursing;
11 or a person dispensing drugs or medicine.

12 (d) "Hospital" means a person, partnership, or corporation
13 lawfully engaged in the operation of a hospital, clinic, health
14 maintenance organization, or sanitarium.

15 (e) "Hospital personnel" means all employees of a hospital,
16 including salaried health care providers, residents, interns, or
17 nurses.

18 (f) "Independent hospital staff" means all nonemployee
19 health care providers with staff privileges or who render health
20 care in a hospital under any formal or informal agreement with
21 the hospital for occasional or regular use of the facility.
22 Independent hospital staff also includes any partnership or cor-
23 poration rendering services in or under contract with a
24 hospital.

25 (g) "Malpractice insurer" means any company ~~authorized to~~
26 ~~do business in this state or doing business in this state and~~
27 ~~offering~~ PROVIDING policies of professional liability insurance

1 to health care providers or hospitals. Malpractice insurer also
2 includes, BUT IS NOT LIMITED TO, any SURPLUS LINES INSURER,
3 insurance trust, joint underwriting association, mutual company,
4 reciprocal or any other entity or person offering such liability
5 coverage, including any state insurance fund.

6 Sec. 3057. (1) There is created within the bureau an arbi-
7 tration administration fund which shall be annually funded by
8 order of the commissioner in such amount as shall be sufficient
9 to defray the actual expenses of the advisory committee and the
10 administrative expense of the projected number of arbitration
11 proceedings for that year.

12 (2) The administrative expense shall include the amount
13 which would otherwise be payable by a claimant as a party to a
14 proceeding together with the costs of arbitrators.

15 (3) The administrative expense may also include a provision
16 for a consulting contract with the American arbitration associa-
17 tion or similar agency for a limited and reasonable amount of
18 technical and organizational advice and consultation in the
19 implementation of this chapter.

20 (4) ~~For the privilege of doing business in this state~~
21 ~~every~~ EACH MALPRACTICE insurer ~~offering malpractice insurance~~
22 ~~to a hospital or health care provider in this state~~ shall remit
23 to the arbitration administration fund such amount as designated
24 by the commissioner pursuant to this section. The commissioner
25 shall allocate a projected cost among malpractice insurers on a
26 pro rata basis according to premium volume and such other
27 relevant factors as the commissioner may designate by rule.

1 SEC. 3455. (1) A POLICY OF DISABILITY INSURANCE PROVIDING
2 FOR HOSPITAL, MEDICAL, SURGICAL, AND SICK-CARE BENEFITS WHICH
3 CONTAINS A PROVISION FOR ARBITRATION OF A DISPUTE AS TO THE MAL-
4 PRACTICE OF A HEALTH PROFESSIONAL OR HEALTH CARE FACILITY UTI-
5 LIZED BY AN INSURED SHALL INCLUDE A STATEMENT OF THAT FACT IN
6 12-POINT BOLDFACE TYPE. SUBJECT TO SUBSECTION (5), THE POLICY
7 ALSO SHALL PROVIDE THAT THE INSURED MAY REVOKE THE AGREEMENT TO
8 ARBITRATE AS IT APPLIES TO THE INSURED WITHIN 60 DAYS AFTER THE
9 EFFECTIVE DATE OF COVERAGE UNDER THE POLICY AND THAT EXECUTION OF
10 THE AGREEMENT TO ARBITRATE IS NOT A PREREQUISITE TO HEALTH CARE
11 OR TREATMENT, AND SHALL INCLUDE A STATEMENT OF THOSE FACTS IN
12 12-POINT BOLDFACE TYPE. THE RIGHT OF THE INSURED TO REVOKE THE
13 AGREEMENT TO ARBITRATE SHALL BE EXERCISED ONLY AS PROVIDED IN
14 SUBSECTIONS (6) AND (7). THE INSURER SHALL ALSO DEVELOP AND
15 IMPLEMENT A PROCEDURE FOR NOTIFYING POTENTIAL INSURED OF THE
16 PROVISION FOR ARBITRATION. THE PROCEDURE SHALL INCLUDE, AT A
17 MINIMUM, BOTH OF THE FOLLOWING:

18 (A) THAT CONTRACTS USED BY THE INSURER CONTAIN, ADJACENT TO
19 THE SIGNATURE LINE AND IN 12-POINT BOLDFACE TYPE, A STATEMENT
20 DESCRIBING THE ARBITRATION REQUIREMENT.

21 (B) THAT THE INSURER PROVIDE THE INSURED WITH AN INFORMA-
22 TIONAL BROCHURE WHICH CLEARLY EXPLAINS THE ARBITRATION AGREEMENT
23 AND REVOCATION PROVISION.

24 (2) ARBITRATION OF A DISPUTE BETWEEN AN INSURED AND A HEALTH
25 PROFESSIONAL OR HEALTH CARE FACILITY AS TO THE MALPRACTICE OF THE
26 HEALTH PROFESSIONAL OR HEALTH CARE FACILITY SHALL BE CONDUCTED
27 PURSUANT TO SECTIONS 5043 TO 5059 OF CHAPTER 50A OF THE REVISED

1 JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961,
2 BEING SECTIONS 600.5043 TO 600.5059 OF THE MICHIGAN COMPILED
3 LAWS.

4 (3) IF A POLICY OF DISABILITY INSURANCE AS DESCRIBED IN
5 SUBSECTION (1) INCLUDES COVERAGE FOR A MINOR, THE POLICY SHALL
6 NOT BE SUBJECT TO DISAFFIRMANCE IF SIGNED OR OTHERWISE AGREED TO
7 BY THE MINOR'S PARENT OR GUARDIAN.

8 (4) A POLICY OF DISABILITY INSURANCE WHICH CONTAINS AN ARBI-
9 TRATION PROVISION WHICH IS IN COMPLIANCE WITH SUBSECTION (1)
10 SHALL NOT BE CONSIDERED A CONTRACT OF ADHESION OR UNCONSCIONABLE
11 OR OTHERWISE IMPROPER BECAUSE OF SUCH PROVISION. THE ARBITRATION
12 PROVISION SHALL APPLY TO ALL PERSONS COVERED UNDER THE POLICY,
13 INCLUDING THEIR SPOUSES AND CHILDREN, BOTH BORN AND IN UTERO,
14 AND, IN THE CASE OF A MALPRACTICE ACTION INVOLVING THE DEATH OF A
15 PERSON COVERED UNDER THE POLICY, ALL PERSONS TO WHOM THE PERSON
16 COVERED UNDER THE POLICY, BY LAW, OWED A DUTY OF SUPPORT AT THE
17 TIME OF HIS OR HER DEATH.

18 (5) AN INSURER MAY OFFER ECONOMIC INCENTIVES IN CONSIDERA-
19 TION OF AN INSURED'S AGREEMENT NOT TO EXERCISE THE RIGHT TO
20 REVOKE THE AGREEMENT TO ARBITRATE CONTAINED IN THE POLICY, AS
21 PROVIDED IN SUBSECTION (1).

22 (6) THE RIGHT OF THE INSURED TO REVOKE AN AGREEMENT TO ARBI-
23 TRATE CONTAINED IN A POLICY OF DISABILITY INSURANCE PROVIDING FOR
24 HOSPITAL, MEDICAL, SURGICAL, AND SICK CARE BENEFITS SHALL BE
25 EXERCISED PURSUANT TO EITHER THIS SUBSECTION OR SUBSECTION (7).
26 UPON REQUEST OF THE INSURED, THE INSURER SHALL PROVIDE A FORM FOR
27 THE INSURED TO SIGN INDICATING THE INSURED'S REVOCATION OF THE

1 AGREEMENT TO ARBITRATE. THE FORM SHALL BE PRESCRIBED BY THE
2 COMMISSIONER, AND SHALL CONTAIN AN ORIGINAL AND 1 COPY. THE
3 INSURED SHALL SIGN THE FORM AND SEND THE ORIGINAL BY REGISTERED
4 MAIL TO THE INSURER, AND SHALL RETAIN THE COPY.

5 (7) AS AN ALTERNATIVE TO THE REVOCATION PROCEDURE SET FORTH
6 IN SUBSECTION (6), AN INSURED MAY REVOKE THE AGREEMENT TO ARBI-
7 TRATE BY NOTIFYING THE INSURER IN WRITING BY REGISTERED MAIL OF
8 THE INSURED'S INTENTION TO REVOKE THE ARBITRATION AGREEMENT. THE
9 NOTICE SHALL INCLUDE, AT A MINIMUM, THE INSURED'S NAME, ADDRESS,
10 AND POLICY NUMBER AND A STATEMENT OF THE INSURED'S INTENT TO
11 REVOKE THE ARBITRATION AGREEMENT.

12 (8) IF AN INSURED IS COVERED AS A DEPENDENT UNDER ANOTHER
13 POLICY OR ANOTHER TYPE OF HEALTH CARE COVERAGE OR BENEFIT PLAN,
14 AND THE INSURED REVOKES THE AGREEMENT TO ARBITRATE CONTAINED IN
15 THE POLICY UNDER WHICH THE INSURED IS THE PRIMARY INSURED, THE
16 INSURED SHALL NOT BE BOUND BY AN ARBITRATION AGREEMENT CONTAINED
17 IN ANY OTHER POLICY OR HEALTH CARE COVERAGE OR BENEFIT PLAN UNDER
18 WHICH THE INSURED IS COVERED AS A DEPENDENT.

19 (9) THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT TO THE
20 LEGISLATURE ON THE EFFECT OF ARBITRATION AGREEMENTS CONTAINED IN
21 POLICIES OF DISABILITY INSURANCE DESCRIBED IN SUBSECTION (1)
22 INCLUDING, BUT NOT LIMITED TO, COST SAVINGS REALIZED BY INSURERS
23 AS A RESULT OF INCLUDING ARBITRATION AGREEMENTS IN THE POLICIES
24 OF DISABILITY INSURANCE. THE REPORT REQUIRED UNDER THIS SUBSEC-
25 TION SHALL BE SUBMITTED NOT LATER THAN THE EXPIRATION OF 3 YEARS
26 AFTER THE EFFECTIVE DATE OF THIS SECTION.

1 (10) AS USED IN THIS SECTION:

2 (A) "HEALTH CARE FACILITY" MEANS A HEALTH FACILITY OR AGENCY
3 AS DEFINED IN SECTION 20106 OF THE PUBLIC HEALTH CODE, ACT
4 NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.20106 OF
5 THE MICHIGAN COMPILED LAWS.

6 (B) "HEALTH PROFESSIONAL" MEANS A PERSON LICENSED, CERTI-
7 FIED, OR REGISTERED UNDER PARTS 161 TO 182 OF ACT NO. 368 OF THE
8 PUBLIC ACTS OF 1978, BEING SECTIONS 333.16101 TO 333.18237 OF THE
9 MICHIGAN COMPILED LAWS.

10 (C) "MALPRACTICE" MEANS A DISPUTE, CONTROVERSY, OR ISSUE
11 ARISING OUT OF OR RESULTING FROM INJURY TO OR THE DEATH OF, AN
12 INDIVIDUAL WHICH WAS CAUSED BY AN ERROR, OMISSION, OR NEGLIGENCE
13 IN THE PERFORMANCE OF SERVICES BY A HEALTH PROFESSIONAL, HEALTH
14 CARE FACILITY, OR THEIR AGENT OR BASED ON A CLAIMED PERFORMANCE
15 OF SUCH SERVICES WITHOUT CONSENT, IN BREACH OF WARRANTY, OR IN
16 VIOLATION OF CONTRACT.

17 SEC. 3612. (1) A POLICY OF GROUP DISABILITY INSURANCE PRO-
18 VIDING FOR HOSPITAL, MEDICAL, SURGICAL, AND SICK-CARE BENEFITS
19 WHICH CONTAINS A PROVISION FOR ARBITRATION OF A DISPUTE AS TO THE
20 MALPRACTICE OF A HEALTH PROFESSIONAL OR HEALTH CARE FACILITY UTI-
21 LIZED BY AN INSURED SHALL INCLUDE A CONSPICUOUS STATEMENT OF THAT
22 FACT. SUBJECT TO SUBSECTION (5), THE POLICY ALSO SHALL PROVIDE
23 THAT AN INSURED MAY REVOKE THE AGREEMENT TO ARBITRATE AS IT
24 APPLIES TO THE INSURED WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF
25 COVERAGE UNDER THE POLICY AND THAT EXECUTION OF THE AGREEMENT TO
26 ARBITRATE IS NOT A PREREQUISITE TO HEALTH CARE OR TREATMENT, AND
27 SHALL INCLUDE A CONSPICUOUS STATEMENT OF THOSE FACTS. THE RIGHT

1 OF THE INSURED TO REVOKE THE AGREEMENT TO ARBITRATE SHALL BE
2 EXERCISED ONLY AS PROVIDED IN SUBSECTIONS (6) AND (7). THE
3 INSURER SHALL ALSO DEVELOP AND IMPLEMENT A PROCEDURE FOR NOTIFY-
4 ING POTENTIAL INSUREDS OF THE PROVISION FOR ARBITRATION. THE
5 PROCEDURE SHALL INCLUDE, AT A MINIMUM, BOTH OF THE FOLLOWING:

6 (A) THAT CONTRACTS USED BY THE INSURER CONTAIN, ADJACENT TO
7 THE SIGNATURE LINE, A STATEMENT DESCRIBING THE ARBITRATION
8 REQUIREMENT.

9 (B) THAT THE INSURER PROVIDE THE INSURED WITH AN INFORMA-
10 TIONAL BROCHURE WHICH CLEARLY EXPLAINS THE ARBITRATION AGREEMENT
11 AND REVOCATION PROVISION.

12 (2) ARBITRATION OF A DISPUTE BETWEEN AN INSURED AND A HEALTH
13 PROFESSIONAL OR HEALTH CARE FACILITY AS TO THE MALPRACTICE OF THE
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17 BEING SECTIONS 600.5043 TO 600.5059 OF THE MICHIGAN COMPILED
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19 (3) IF A POLICY OF GROUP DISABILITY INSURANCE AS DESCRIBED
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21 NOT BE SUBJECT TO DISAFFIRMANCE IF SIGNED OR OTHERWISE AGREED TO
22 BY THE MINOR'S PARENT OR GUARDIAN.

23 (4) A POLICY OF GROUP DISABILITY INSURANCE WHICH CONTAINS AN
24 ARBITRATION PROVISION WHICH IS IN COMPLIANCE WITH SUBSECTION (1)
25 SHALL NOT BE CONSIDERED A CONTRACT OF ADHESION OR UNCONSCIONABLE
26 OR OTHERWISE IMPROPER BECAUSE OF SUCH PROVISION. THE ARBITRATION
27 PROVISION SHALL APPLY TO ALL PERSONS COVERED UNDER THE POLICY,

1 INCLUDING THEIR SPOUSES AND CHILDREN, BOTH BORN AND IN UTERO,
2 AND, IN THE CASE OF A MALPRACTICE ACTION INVOLVING THE DEATH OF A
3 PERSON COVERED UNDER THE POLICY, ALL PERSONS TO WHOM THE PERSON
4 COVERED UNDER THE POLICY, BY LAW, OWED A DUTY OF SUPPORT AT THE
5 TIME OF HIS OR HER DEATH.

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17 MISSIONER, AND SHALL CONTAIN AN ORIGINAL AND 1 COPY. THE INSURED
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