

# SENATE BILL No. 13

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

A bill to amend sections 5041, 5042, and 5065 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," being sections 600.5041, 600.5042, and 600.5065 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5041, 5042, and 5065 of Act No. 236 of  
2 the Public Acts of 1961, being sections 600.5041, 600.5042, and  
3 600.5065 of the Michigan Compiled Laws, are amended to read as  
4 follows:

5 Sec. 5041. (1) A person who receives health care from a  
6 health care provider may, if offered, execute an agreement to  
7 arbitrate a dispute, controversy, or issue arising out of health  
8 care or treatment by a health care provider who is not an  
9 employee of a hospital.

1       (2) The agreement to arbitrate shall provide that its  
2 execution is not a prerequisite to health care or treatment.

3       (3) The agreement shall provide that the person receiving  
4 health care treatment or his OR HER legal representative may  
5 revoke the agreement within 60 days after execution by notifying  
6 the health care provider in writing. A health care provider may  
7 not revoke the agreement after its execution. A PARENT OR LEGAL  
8 GUARDIAN OF A MINOR MAY REVOKE AN AGREEMENT MADE ON BEHALF OF THE  
9 MINOR. IF AN ADULT WHO HAS EXECUTED AN AGREEMENT DIES OR BECOMES  
10 LEGALLY INCAPACITATED DURING THE 60-DAY REVOCATION PERIOD, THE  
11 60-DAY REVOCATION PERIOD SHALL BE TOLLED UNTIL A LEGAL REPRESENTATIVE IS APPOINTED FOR THE PERSON OR HIS OR HER ESTATE. AS USED  
12 IN THIS SUBSECTION, "LEGAL REPRESENTATIVE" MEANS THE PERSONAL  
13 REPRESENTATIVE OF A DECEDENT'S ESTATE, OR, IN THE CASE OF A  
14 LEGALLY INCAPACITATED ADULT, THE GUARDIAN FOR THAT PERSON OR THE  
15 CONSERVATOR OF HIS OR HER ESTATE.

17       (4) An agreement under this section shall expire 1 year  
18 after its execution and may be renewed by execution of a new  
19 agreement.

20       (5) The agreement shall contain the following provision in  
21 12-point boldface type immediately above the space for signature  
22 of the parties: "This agreement to arbitrate is not a prerequi-  
23 site to health care or treatment and may be revoked within 60  
24 days after execution by notification in writing".

25       (6) The form of the agreement promulgated shall be accom-  
26 panied by an information brochure which clearly details the  
27 agreement and revocation provision. The brochure shall be

1 furnished TO the person receiving health care ~~at the time of~~  
2 BEFORE THE execution OF THE AGREEMENT. The person receiving  
3 health care shall be furnished with either an original or dupli-  
4 cate original of the agreement.

5 (7) An agreement to arbitrate which includes the provisions  
6 of this section shall be presumed valid.

7 (8) IF A PARTY SUBSEQUENTLY CHALLENGES THE VALIDITY OF AN  
8 AGREEMENT TO ARBITRATE, THAT PARTY SHALL HAVE THE BURDEN OF PROV-  
9 ING THAT THE AGREEMENT IS INVALID. UPON THE EXPIRATION OF 4  
10 YEARS AFTER ITS EFFECTIVE DATE, THIS SUBSECTION SHALL NOT APPLY.

11 (9) THE ARBITRATION AGREEMENT SHALL APPLY TO THE PATIENT,  
12 THE PATIENT'S SPOUSE AND CHILDREN, BOTH BORN AND IN UTERO, AND,  
13 IN THE CASE OF A DISPUTE, CONTROVERSY, OR ISSUE ARISING OUT OF  
14 HEALTH CARE OR TREATMENT WHICH INVOLVES THE DEATH OF THE PATIENT,  
15 ALL INDIVIDUALS TO WHOM THE PATIENT, BY LAW, OWED A DUTY OF SUP-  
16 PORT AT THE TIME OF THE PATIENT'S DEATH.

17 Sec. 5042. (1) A person who receives health care in a hos-  
18 pital may execute an agreement to arbitrate a dispute, controver-  
19 sy, or issue arising out of health care or treatment rendered by  
20 the hospital. A person receiving emergency health care or treat-  
21 ment may be offered the option to arbitrate but shall be offered  
22 the option after the emergency care or treatment is completed.

23 (2) The agreement to arbitrate shall provide that its execu-  
24 tion is not a prerequisite to health care or treatment.

25 (3) The agreement to arbitrate shall provide that the person  
26 receiving health care or treatment or his OR HER legal  
27 representative, but not the hospital, may revoke the agreement

1 within 60 days after discharge from the hospital by notifying the  
2 hospital in writing. A PARENT OR LEGAL GUARDIAN OF A MINOR MAY  
3 REVOKE AN AGREEMENT MADE ON BEHALF OF THE MINOR. IF AN ADULT WHO  
4 HAS EXECUTED AN AGREEMENT DIES OR BECOMES LEGALLY INCAPACITATED  
5 BEFORE OR DURING THE 60-DAY REVOCATION PERIOD, THE 60-DAY REVOCATION  
6 PERIOD SHALL BE TOLLED UNTIL A LEGAL REPRESENTATIVE IS  
7 APPOINTED FOR THE PERSON OR HIS OR HER ESTATE. AS USED IN THIS  
8 SUBSECTION, "LEGAL REPRESENTATIVE" MEANS THE PERSONAL REPRESENTATIVE  
9 OF A DECEDENT'S ESTATE, OR, IN THE CASE OF A LEGALLY INCAPACITATED  
10 ADULT, THE GUARDIAN FOR THAT PERSON OR THE CONSERVATOR  
11 OF HIS OR HER ESTATE.

12 (4) The agreement shall contain the following provision in  
13 12-point boldface type immediately above the space for signature  
14 of the parties: "This agreement to arbitrate is not a prerequisite  
15 to health care or treatment and may be revoked within 60  
16 days after discharge by notification in writing".

17 (5) Notwithstanding the continuing existence of a health  
18 care provider-patient arbitration agreement, all surgical and  
19 medical procedures performed by a participating health care provider  
20 in a hospital shall be covered by the terms and conditions  
21 applicable to the agreement between the patient and the  
22 hospital. Post-discharge treatment in the health care provider's  
23 office subsequent to discharge from such institution will be governed  
24 by the terms of any existing health care provider-patient  
25 arbitration agreement.

26 (6) Each admission to a hospital shall be treated as  
27 separate and distinct for the purposes of an agreement to

1 arbitrate, but a person receiving outpatient care may execute an  
2 agreement with the hospital which provides for continuation of  
3 the agreement for a specific or continuing program of health care  
4 or treatment under ~~the provisions of~~ section 5041.

5 (7) The form of the agreement shall be furnished to the  
6 person receiving health care or treatment as provided in section  
7 5041 (6).

8 (8) An agreement to arbitrate which includes the provisions  
9 of this section shall be presumed valid.

10 (9) IF A PARTY SUBSEQUENTLY CHALLENGES THE VALIDITY OF AN  
11 AGREEMENT TO ARBITRATE, THAT PARTY SHALL HAVE THE BURDEN OF PROV-  
12 ING THAT THE AGREEMENT IS INVALID. UPON THE EXPIRATION OF 4  
13 YEARS AFTER ITS EFFECTIVE DATE, THIS SUBSECTION SHALL NOT APPLY.

14 (10) THE ARBITRATION AGREEMENT SHALL APPLY TO THE PATIENT,  
15 THE PATIENT'S SPOUSE AND CHILDREN, BOTH BORN AND IN UTERO, AND,  
16 IN THE CASE OF A DISPUTE, CONTROVERSY, OR ISSUE ARISING OUT OF  
17 HEALTH CARE OR TREATMENT WHICH INVOLVES THE DEATH OF THE PATIENT,  
18 ALL INDIVIDUALS TO WHOM THE PATIENT, BY LAW, OWED A DUTY OF SUP-  
19 PORT AT THE TIME OF THE PATIENT'S DEATH.

20 Sec. 5065. (1) ~~Within 3 years from the effective date of~~  
21 ~~this chapter,~~ BY SEPTEMBER 1, 1978, a joint legislative commit-  
22 tee shall be established to review the operation and experience  
23 of arbitration under this chapter in conjunction with the insur-  
24 ance commissioner, the arbitration advisory committee established  
25 under the insurance code, and other interested persons. The com-  
26 mittee shall report recommendations for statutory changes, if

1 any, to the entire legislature before ~~the end of the fourth year~~  
2 ~~from the effective date of this chapter~~ SEPTEMBER 1, 1979.

3       (2) AS A FOLLOW-UP TO THE REPORT REQUIRED BY SUBSECTION (1),  
4 WITHIN 3 YEARS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION, A  
5 JOINT LEGISLATIVE COMMITTEE SHALL BE ESTABLISHED AND SHALL REVIEW  
6 THE OPERATION AND EXPERIENCE OF ARBITRATION UNDER THIS CHAPTER,  
7 IN CONJUNCTION WITH THE INSURANCE COMMISSIONER, THE ARBITRATION  
8 ADVISORY COMMITTEE ESTABLISHED UNDER THE INSURANCE CODE, AND  
9 OTHER INTERESTED PERSONS. THE JOINT LEGISLATIVE COMMITTEE SHALL  
10 REPORT RECOMMENDATIONS FOR STATUTORY CHANGES, IF ANY, AND ON THE  
11 FEASIBILITY OF CONTINUING THIS CHAPTER. UPON THE EXPIRATION OF 4  
12 YEARS AFTER ITS EFFECTIVE DATE, THIS SUBSECTION SHALL NOT APPLY.