

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5033

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 2431, 5838a, and 5851 (MCL 600.2431,
600.5838a, and 600.5851), section 5838a as amended by 1993 PA 78
and section 5851 as amended by 1993 PA 283, and by adding section
177; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 177. (1) EFFECTIVE FEBRUARY 1, 2011, THE INDIGENT DEFENSE
2 COUNSEL COMMISSION IS CREATED AS AN ADVISORY BODY IN THE DEPARTMENT
3 OF TECHNOLOGY, MANAGEMENT, AND BUDGET. THE INDIGENT DEFENSE COUNSEL
4 COMMISSION SHALL CONCLUDE ITS WORK BY DECEMBER 31, 2011.

5 (2) THE INDIGENT DEFENSE COUNSEL COMMISSION SHALL CONSIST OF

1 THE FOLLOWING MEMBERS:

2 (A) ONE MEMBER APPOINTED BY THE GOVERNOR FROM A LIST
3 CONSISTING OF THE NAMES OF 3 INDIVIDUALS NOMINATED BY THE SUPREME
4 COURT.

5 (B) ONE MEMBER APPOINTED BY THE GOVERNOR FROM A LIST
6 CONSISTING OF THE NAMES OF 3 INDIVIDUALS NOMINATED BY THE MICHIGAN
7 JUDGES ASSOCIATION.

8 (C) ONE MEMBER APPOINTED BY THE GOVERNOR FROM A LIST
9 CONSISTING OF THE NAMES OF 3 INDIVIDUALS NOMINATED BY THE MICHIGAN
10 DISTRICT JUDGES ASSOCIATION.

11 (D) ONE MEMBER APPOINTED BY THE GOVERNOR FROM A LIST
12 CONSISTING OF THE NAMES OF 3 INDIVIDUALS NOMINATED BY THE MICHIGAN
13 PROBATE JUDGES ASSOCIATION.

14 (E) ONE MEMBER APPOINTED BY THE GOVERNOR FROM A LIST
15 CONSISTING OF THE NAMES OF 3 INDIVIDUALS NOMINATED BY THE SENATE
16 MAJORITY LEADER.

17 (F) ONE MEMBER APPOINTED BY THE GOVERNOR FROM A LIST
18 CONSISTING OF THE NAMES OF 3 INDIVIDUALS NOMINATED BY THE SPEAKER
19 OF THE HOUSE OF REPRESENTATIVES.

20 (G) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE.

21 (H) THE DIRECTOR OF THE STATE BUDGET OFFICE OR THE DIRECTOR'S
22 DESIGNEE.

23 (I) ONE MEMBER APPOINTED BY THE GOVERNOR FROM A LIST
24 CONSISTING OF THE NAMES OF 3 INDIVIDUALS NOMINATED BY THE
25 PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN.

26 (J) ONE MEMBER APPOINTED BY THE GOVERNOR FROM A LIST
27 CONSISTING OF THE NAMES OF 3 INDIVIDUALS NOMINATED BY THE CRIMINAL

1 DEFENSE ATTORNEYS ASSOCIATION OF MICHIGAN.

2 (K) ONE MEMBER APPOINTED BY THE GOVERNOR FROM A LIST
3 CONSISTING OF THE NAMES OF 3 INDIVIDUALS NOMINATED BY THE STATE BAR
4 OF MICHIGAN.

5 (I) ONE MEMBER APPOINTED BY THE GOVERNOR AS A REPRESENTATIVE OF
6 CRIME VICTIMS' RIGHTS GROUPS.

7 (M) ONE MEMBER APPOINTED BY THE GOVERNOR AS A REPRESENTATIVE
8 OF LOCAL FUNDING UNITS.

9 (3) MEMBERS APPOINTED TO THE INDIGENT DEFENSE COUNSEL
10 COMMISSION SHALL REASONABLY REFLECT THE POPULATION, GEOGRAPHIC, AND
11 RURAL AND URBAN DIVERSITY OF THIS STATE. A SITTING JUDGE SHALL NOT
12 BE APPOINTED TO THE INDIGENT DEFENSE COUNSEL COMMISSION, EXCEPT
13 THAT AN INDIVIDUAL APPOINTED FROM A LIST SUBMITTED BY THE SUPREME
14 COURT, THE MICHIGAN JUDGES ASSOCIATION, THE MICHIGAN DISTRICT
15 JUDGES ASSOCIATION, OR THE MICHIGAN PROBATE JUDGES ASSOCIATION MAY
16 BE A SITTING JUDGE.

17 (4) IF A VACANCY OCCURS ON THE INDIGENT DEFENSE COUNSEL
18 COMMISSION, THE INDIGENT DEFENSE COUNSEL COMMISSION SHALL MAKE AN
19 APPOINTMENT FOR THE UNEXPIRED TERM IN THE SAME MANNER AS THE
20 GOVERNOR MADE THE ORIGINAL APPOINTMENT.

21 (5) THE GOVERNOR MAY REMOVE A MEMBER OF THE INDIGENT DEFENSE
22 COUNSEL COMMISSION FOR INCOMPETENCY, DERELICTION OF DUTY,
23 MALFEASANCE, MISFEASANCE, OR NONFEASANCE IN OFFICE, OR ANY OTHER
24 GOOD CAUSE.

25 (6) THE INDIGENT DEFENSE COUNSEL COMMISSION SHALL STUDY AND
26 MAKE RECOMMENDATIONS REGARDING PROVIDING A FLEXIBLE, COST-
27 EFFECTIVE, AND FISCALLY RESPONSIBLE INDIGENT DEFENSE DELIVERY

1 SYSTEM THAT IS RESPONSIVE TO AND RESPECTFUL OF JURISDICTIONAL
2 VARIATIONS AND LOCAL COMMUNITY NEEDS AND INTERESTS. THE COMMITTEE
3 RECOMMENDATION SHOULD ENSURE THAT THE PUBLIC DEFENDER SYSTEM IS
4 FREE FROM UNDUE POLITICAL INTERFERENCE AND FREE OF CONFLICTS OF
5 INTERESTS AND THAT THE RIGHT TO COUNSEL IS DELIVERED BY QUALIFIED
6 AND COMPETENT COUNSEL IN A MANNER THAT IS FAIR AND CONSISTENT
7 THROUGHOUT THE STATE AT EACH CRITICAL STAGE OF THE PROCEEDING.

8 (7) THE FIRST MEETING OF THE INDIGENT DEFENSE COUNSEL
9 COMMISSION SHALL BE CALLED BY THE ATTORNEY GENERAL. AT THE FIRST
10 MEETING, THE INDIGENT DEFENSE COUNSEL COMMISSION SHALL ELECT FROM
11 AMONG ITS MEMBERS A CHAIRPERSON AND OTHER OFFICERS AS IT CONSIDERS
12 NECESSARY OR APPROPRIATE. AFTER THE FIRST MEETING, THE INDIGENT
13 DEFENSE COUNSEL COMMISSION SHALL MEET AT LEAST QUARTERLY, OR MORE
14 FREQUENTLY AT THE CALL OF THE CHAIRPERSON OR IF REQUESTED BY A
15 MAJORITY OR MORE OF THE MEMBERS.

16 (8) A MAJORITY OF THE MEMBERS OF THE INDIGENT DEFENSE COUNSEL
17 COMMISSION CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS AT A
18 MEETING OF THE INDIGENT DEFENSE COUNSEL COMMISSION. A MAJORITY OF
19 THE MEMBERS PRESENT AND SERVING ARE REQUIRED FOR OFFICIAL ACTION OF
20 THE INDIGENT DEFENSE COUNSEL COMMISSION.

21 (9) THE BUSINESS THAT THE INDIGENT DEFENSE COUNSEL COMMISSION
22 MAY PERFORM SHALL BE CONDUCTED AT A PUBLIC MEETING OF THE INDIGENT
23 DEFENSE COUNSEL COMMISSION HELD IN COMPLIANCE WITH THE OPEN
24 MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

25 (10) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
26 RETAINED BY THE INDIGENT DEFENSE COUNSEL COMMISSION IN THE
27 PERFORMANCE OF AN OFFICIAL FUNCTION IS SUBJECT TO THE FREEDOM OF

1 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

2 (11) BY DECEMBER 31, 2011, THE INDIGENT DEFENSE COUNSEL
3 COMMISSION SHALL REPORT ITS RECOMMENDATIONS TO THE GOVERNOR,
4 SUPREME COURT, SENATE MAJORITY LEADER, SENATE MINORITY LEADER,
5 SPEAKER OF THE HOUSE OF REPRESENTATIVES, HOUSE MINORITY LEADER,
6 CHAIRS OF THE SENATE AND HOUSE STANDING COMMITTEES ON
7 APPROPRIATIONS AND JUDICIARY, SECRETARY OF THE SENATE, CLERK OF THE
8 HOUSE OF REPRESENTATIVES, AND THE PUBLIC.

9 (12) THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT, AND BUDGET
10 SHALL PROVIDE STAFF AND SUPPORT TO THE INDIGENT DEFENSE COUNSEL
11 COMMISSION AS NECESSARY FOR THE COMMISSION TO PERFORM ITS DUTIES
12 UNDER THIS SECTION.

13 (13) THE INDIGENT DEFENSE COUNSEL COMMISSION MAY, AS
14 APPROPRIATE, MAKE INQUIRIES, STUDIES, AND INVESTIGATIONS, HOLD
15 HEARINGS, AND RECEIVE COMMENTS FROM THE PUBLIC. THE COMMISSION MAY
16 ALSO CONSULT WITH OUTSIDE EXPERTS IN ORDER TO PERFORM ITS DUTIES,
17 INCLUDING EXPERTS IN THE PRIVATE SECTOR, ORGANIZED LABOR, AND
18 GOVERNMENT AGENCIES AND AT INSTITUTIONS OF HIGHER EDUCATION.

19 (14) MEMBERS OF THE INDIGENT DEFENSE COUNSEL COMMISSION SHALL
20 SERVE WITHOUT COMPENSATION.

21 (15) A DEPARTMENT, COMMITTEE, COMMISSIONER, OR OFFICER OF THIS
22 STATE, OR OF ANY POLITICAL SUBDIVISION OF THIS STATE, SHALL GIVE TO
23 THE INDIGENT DEFENSE COUNSEL COMMISSION ANY NECESSARY ASSISTANCE
24 REQUIRED BY THE COMMISSION OR A MEMBER OR REPRESENTATIVE OF THE
25 COMMISSION IN PERFORMANCE OF THE DUTIES OF THE COMMISSION SO AS FAR
26 AS THE ASSISTANCE IS COMPATIBLE WITH THE DUTIES OF THE DEPARTMENT,
27 COMMITTEE, COMMISSIONER, OR OFFICER. THE DEPARTMENT, COMMITTEE,

1 COMMISSIONER, OR OFFICER SHALL ALSO PROVIDE THE COMMISSION OR
 2 MEMBER OR REPRESENTATIVE OF THE COMMISSION FREE ACCESS TO ANY
 3 BOOKS, RECORDS, OR DOCUMENTS IN THE DEPARTMENT'S, COMMITTEE'S,
 4 COMMISSIONER'S, OR OFFICER'S CUSTODY THAT RELATE TO MATTERS WITHIN
 5 THE SCOPE OF INQUIRY, STUDY, OR REVIEW OF THE COMMISSION.

6 (16) THIS SECTION IS REPEALED EFFECTIVE JANUARY 1, 2012.

7 Sec. 2431. (1) The expenses of foreclosing ~~any~~**A** mortgage by
 8 advertisement shall be taxed in the circuit court as in civil
 9 actions, ~~upon~~**ON** the request of any person ~~paying~~**WHO PAYS** the
 10 expenses, ~~thereof, and upon such~~**AGAINST THE** party liable to pay
 11 the ~~same~~**EXPENSES**.

12 (2) ~~Where~~**IF** an attorney is employed to foreclose a mortgage
 13 by advertisement, an ~~attorney's~~**ATTORNEY** fee, not to exceed any
 14 amount ~~which may be~~ provided for in the mortgage, may be included
 15 as a part of the expenses in the amount bid ~~upon such~~**AT THE** sale
 16 for principal and interest due ~~thereon~~**ON THE MORTGAGE** in the
 17 following amounts:

18 (a) ~~for all sums of~~**IF THE AMOUNT OF PRINCIPAL AND INTEREST IS**
 19 \$1,000.00 or less, \$25.00.

20 (b) ~~for all sums over~~**IF THE AMOUNT OF PRINCIPAL AND INTEREST**
 21 **IS MORE THAN** \$1,000.00 but less than \$5,000.00, \$50.00.

22 (c) ~~for all sums of~~**IF THE AMOUNT OF PRINCIPAL AND INTEREST IS**
 23 \$5,000.00 or more, \$75.00.

24 (3) ~~But if~~**IF** payment **OF ALL AMOUNTS THEN DUE UNDER AN**
 25 **ACCELERATION PROVIDED FOR IN THE MORTGAGE** is made after ~~foreclosure~~
 26 proceedings **TO FORECLOSE A MORTGAGE BY ADVERTISEMENT** are commenced
 27 and before **THE** sale is made, only 1/2 of ~~such attorney's fees~~**THE**

1 **ATTORNEY FEE UNDER SUBSECTION (2)** shall be allowed. Both the
2 principal and the interest due ~~thereon~~ **ON THE PRINCIPAL** shall be
3 included in the sum on which the ~~attorney's~~ **ATTORNEY** fee is
4 computed.

5 **(4) IF A MORTGAGE IS REINSTATED BEFORE THE SALE UNDER A**
6 **FORECLOSURE BY ADVERTISEMENT IS MADE, THE PARTY FORECLOSING THE**
7 **MORTGAGE MAY INCLUDE AN ATTORNEY FEE, NOT TO EXCEED ANY AMOUNT**
8 **PROVIDED FOR IN THE MORTGAGE, IN THE PAYMENT REQUIRED TO REINSTATE**
9 **THE MORTGAGE. THE LIMITATIONS ON ATTORNEY FEES UNDER SUBSECTIONS**
10 **(2) AND (3) DO NOT APPLY TO AN ATTORNEY FEE UNDER THIS SUBSECTION.**

11 Sec. 5838a. (1) For purposes of this act, a claim based on the
12 medical malpractice of a person or entity who is or who holds
13 himself or herself out to be a licensed health care professional,
14 licensed health facility or agency, or an employee or agent of a
15 licensed health facility or agency who is engaging in or otherwise
16 assisting in medical care and treatment, whether or not the
17 licensed health care professional, licensed health facility or
18 agency, or their employee or agent is engaged in the practice of
19 the health profession in a sole proprietorship, partnership,
20 professional corporation, or other business entity, accrues at the
21 time of the act or omission that is the basis for the claim of
22 medical malpractice, regardless of the time the plaintiff discovers
23 or otherwise has knowledge of the claim. As used in this
24 subsection:

25 (a) "Licensed health facility or agency" means a health
26 facility or agency licensed under article 17 of the public health
27 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~

1 ~~333.20101 to 333.22260 of the Michigan Compiled Laws~~1978 PA 368,
2 MCL 333.20101 TO 333.22260.

3 (b) "Licensed health care professional" means an individual
4 licensed or registered under article 15 of the public health code,
5 ~~Act No. 368 of the Public Acts of 1978, being sections 333.16101 to~~
6 ~~333.18838 of the Michigan Compiled Laws~~1978 PA 368, MCL 333.16101
7 TO 333.18838, and engaged in the practice of his or her health
8 profession in a sole proprietorship, partnership, professional
9 corporation, or other business entity. However, licensed health
10 care professional does not include a sanitarian or a veterinarian.

11 (2) Except as otherwise provided in this subsection, an action
12 involving a claim based on medical malpractice may be commenced at
13 any time within the applicable period prescribed in section 5805 or
14 sections 5851 to 5856, or within 6 months after the plaintiff
15 discovers or should have discovered the existence of the claim,
16 whichever is later. However, except as otherwise provided in
17 section 5851(7) or (8), the claim shall not be commenced later than
18 6 years after the date of the act or omission that is the basis for
19 the claim. The burden of proving that the plaintiff, as a result of
20 physical discomfort, appearance, condition, or otherwise, neither
21 discovered nor should have discovered the existence of the claim at
22 least 6 months before the expiration of the period otherwise
23 applicable to the claim is on the plaintiff. A medical malpractice
24 action that is not commenced within the time prescribed by this
25 subsection is barred. This subsection does not apply, and the
26 plaintiff is subject to the period of limitations set forth in
27 subsection (3), under 1 of the following circumstances:

1 (a) If discovery of the existence of the claim was prevented
2 by the fraudulent conduct of the health care professional against
3 whom the claim is made or a named employee or agent of the health
4 professional against whom the claim is made, or of the health
5 facility against whom the claim is made or a named employee or
6 agent of a health facility against whom the claim is made.

7 (b) There has been permanent loss of or damage to a
8 reproductive organ resulting in the inability to procreate.

9 (3) An action involving a claim based on medical malpractice
10 under circumstances described in subsection (2)(a) or (b) may be
11 commenced at any time within the applicable period prescribed in
12 section 5805 or sections 5851 to 5856, or within 6 months after the
13 plaintiff discovers or should have discovered the existence of the
14 claim, whichever is later. The burden of proving that the
15 plaintiff, as a result of physical discomfort, appearance,
16 condition or otherwise, neither discovered nor should have
17 discovered the existence of the claim at least 6 months before the
18 expiration of the period otherwise applicable to the claim is on
19 the plaintiff. A medical malpractice action that is not commenced
20 within the time prescribed by this subsection is barred.

21 Sec. 5851. (1) Except as otherwise provided in subsections (7)
22 and (8), if the person first entitled to make an entry or bring an
23 action under this act is under 18 years of age or insane at the
24 time the claim accrues, the person or those claiming under the
25 person shall have 1 year after the disability is removed through
26 death or otherwise, to make the entry or bring the action although
27 the period of limitations has run. This section does not lessen the

1 time provided for in section 5852.

2 (2) The term insane as employed in this chapter means a
3 condition of mental derangement such as to prevent the sufferer
4 from comprehending rights he or she is otherwise bound to know and
5 is not dependent on whether or not the person has been judicially
6 declared to be insane.

7 (3) To be considered a disability, the infancy or insanity
8 must exist at the time the claim accrues. If the disability comes
9 into existence after the claim has accrued, a court shall not
10 recognize the disability under this section for the purpose of
11 modifying the period of limitations.

12 (4) A person shall not tack successive disabilities. A court
13 shall recognize only those disabilities that exist at the time the
14 claim first accrues and that disable the person to whom the claim
15 first accrues for the purpose of modifying the period of
16 limitations.

17 (5) A court shall recognize both of the disabilities of
18 infancy or insanity that disable the person to whom the claim first
19 accrues at the time the claim first accrues. A court shall count
20 the year of grace provided in this section from the termination of
21 the last disability to the person to whom the claim originally
22 accrued that has continued from the time the claim accrued, whether
23 this disability terminates because of the death of the person
24 disabled or for some other reason.

25 (6) With respect to a claim accruing before the effective date
26 of the age of majority act of 1971, ~~Act No. 79 of the Public Acts~~
27 ~~of 1971, being sections 722.51 to 722.55 of the Michigan Compiled~~

1 ~~Laws, 1971 PA 79, MCL 722.51 TO 722.55~~, the disability of infancy
2 is removed as of the effective date of ~~Act No. 79 of the Public~~
3 ~~Acts of 1971~~ **1971 PA 79, MCL 722.51 TO 722.55**, as to persons who
4 were at least 18 years of age but less than 21 years of age on
5 January 1, 1972, and is removed as of the eighteenth birthday of a
6 person who was under 18 years of age on January 1, 1972.

7 (7) Except as otherwise provided in subsection (8), if, at the
8 time a claim alleging medical malpractice accrues to a person under
9 section 5838a the person has not reached his or her eighth
10 birthday, a person shall not bring an action based on the claim
11 unless the action is commenced on or before the person's tenth
12 birthday or within the period of limitations set forth in section
13 5838a, whichever is later. If, at the time a claim alleging medical
14 malpractice accrues to a person under section 5838a, the person has
15 reached his or her eighth birthday, he or she is subject to the
16 period of limitations set forth in section 5838a.

17 (8) If, at the time a claim alleging medical malpractice
18 accrues to a person under section 5838a, the person has not reached
19 his or her thirteenth birthday and if the claim involves an injury
20 to the person's reproductive system, a person shall not bring an
21 action based on the claim unless the action is commenced on or
22 before the person's fifteenth birthday or within the period of
23 limitations set forth in section 5838a, whichever is later. If, at
24 the time a claim alleging medical malpractice accrues to a person
25 under section 5838a, the person has reached his or her thirteenth
26 birthday and the claim involves an injury to the person's
27 reproductive system, he or she is subject to the period of

1 limitations set forth in section 5838a.

2 (9) If a person was serving a term of imprisonment on ~~the~~
3 ~~effective date of the 1993 amendatory act that added this~~
4 ~~subsection~~ **APRIL 1, 1994**, and that person has a cause of action to
5 which the disability of imprisonment would have been applicable
6 under the former provisions of this section, an entry may be made
7 or an action may be brought under this act for that cause of action
8 within 1 year after ~~the effective date of the 1993 amendatory act~~
9 ~~that added this subsection~~ **APRIL 1, 1994**, or within any other
10 applicable period of limitation provided by law.

11 (10) If a person died or was released from imprisonment at any
12 time within the period of 1 year preceding ~~the effective date of~~
13 ~~the 1993 amendatory act that added this subsection~~ **APRIL 1, 1994**,
14 and that person had a cause of action to which the disability of
15 imprisonment would have been applicable under the former provisions
16 of this section on the date of his or her death or release from
17 imprisonment, an entry may be made or an action may be brought
18 under this act for that cause of action within 1 year after the
19 date of his or her death or release from imprisonment, or within
20 any other applicable period of limitation provided by law.

21 (11) As used in this section, "release from imprisonment"
22 means either of the following:

23 (a) A final release or discharge from imprisonment in a county
24 jail.

25 (b) Release on parole or a final release or discharge from
26 imprisonment in a state or federal correctional facility.