

HOUSE BILL NO. 5531

February 20, 2020, Introduced by Rep. Reilly and referred to the Committee on Health Policy.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 5838a (MCL 600.5838a), as amended by 1993 PA
78.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5838a. (1) For purposes of this act, a claim based on the
2 medical malpractice of a person or entity who is or who holds
3 himself or herself out to be a licensed health care professional,
4 licensed health facility or agency, or an employee or agent of a



1 licensed health facility or agency who is engaging in or otherwise
2 assisting in medical care and treatment, whether or not the
3 licensed health care professional, licensed health facility or
4 agency, or ~~their~~ employee or agent is engaged in the practice of
5 the health profession in a sole proprietorship, partnership,
6 professional corporation, or other business entity, accrues at the
7 time of the act or omission that is the basis for the claim of
8 medical malpractice, regardless of the time the plaintiff discovers
9 or otherwise has knowledge of the claim. As used in this
10 subsection:

11 (a) "Licensed health facility or agency" means a health
12 facility or agency licensed under article 17 of the public health
13 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~
14 ~~333.20101 to 333.22260 of the Michigan Compiled Laws.~~ **1978 PA 368,**
15 **MCL 333.20101 to 333.21925.**

16 (b) "Licensed health care professional" means an individual
17 licensed or registered under article 15 of the public health code,
18 ~~Act No. 368 of the Public Acts of 1978, being sections 333.16101 to~~
19 ~~333.18838 of the Michigan Compiled Laws,~~ **1978 PA 368, MCL 333.16101**
20 **to 333.18838,** and engaged in the practice of his or her health
21 profession in a sole proprietorship, partnership, professional
22 corporation, or other business entity. However, licensed health
23 care professional does not include a sanitarian or a veterinarian.

24 (2) Except as otherwise provided in this subsection, an action
25 involving a claim based on medical malpractice may be commenced at
26 any time within the applicable period prescribed in section 5805 or
27 sections 5851 to 5856, or within 6 months after the plaintiff
28 discovers or should have discovered the existence of the claim,
29 whichever is later. However, except as otherwise provided in



1 section 5851(7) or (8), ~~the~~ **an action involving a claim shall be based**
2 **on medical malpractice must** not be commenced later than 6 years
3 after the date of the act or omission that is the basis for the
4 claim. The burden of proving that the plaintiff, as a result of
5 physical discomfort, appearance, condition, or otherwise, neither
6 discovered nor should have discovered the existence of the claim at
7 least 6 months before the expiration of the period otherwise
8 applicable to the claim is on the plaintiff. A medical malpractice
9 action that is not commenced within the time prescribed by this
10 subsection is barred. This subsection does not apply, and the
11 plaintiff is subject to the period of limitations set forth in
12 subsection (3), under 1 of the following circumstances:

13 (a) If discovery of the existence of the claim was prevented
14 by the fraudulent conduct of the health care professional against
15 whom the claim is made or a named employee or agent of the health
16 professional against whom the claim is made, or of the health
17 facility against whom the claim is made or a named employee or
18 agent of a health facility against whom the claim is made.

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

21 (3) An action involving a claim based on medical malpractice
22 under circumstances described in subsection (2) (a) or (b) may be
23 commenced at any time within the applicable period prescribed in
24 section 5805 or sections 5851 to 5856, or within 6 months after the
25 plaintiff discovers or should have discovered the existence of the
26 claim, whichever is later. The burden of proving that the
27 plaintiff, as a result of physical discomfort, appearance,
28 condition or otherwise, neither discovered nor should have
29 discovered the existence of the claim at least 6 months before the



1 expiration of the period otherwise applicable to the claim is on
2 the plaintiff. A medical malpractice action that is not commenced
3 within the time prescribed by this subsection is barred.

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

6 Enacting section 2. This amendatory act does not take effect
7 unless Senate Bill No. _____ or House Bill No. 5510 (request no.
8 04667'19) of the 100th Legislature is enacted into law.

