



# HOUSE BILL No. 5688

March 14, 1996, Introduced by Reps. Ryan and Nye and referred to the Committee on Judiciary and Civil Rights.

A bill to amend Act No. 236 of the Public Acts of 1961, entitled as amended  
"Revised judicature act of 1961,"  
as amended, being sections 600.101 to 600.9947 of the Michigan Compiled Laws, by adding section 2922a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 236 of the Public Acts of 1961, as  
2 amended, being sections 600.101 to 600.9947 of the Michigan  
3 Compiled Laws, is amended by adding section 2922a to read as  
4 follows:

5 SEC. 2922A. (1) WHENEVER DEATH, INJURY, DISFIGUREMENT, OR  
6 DISABILITY TO AN UNBORN CHILD IS CAUSED BY NEGLIGENCE, ASSAULT,  
7 OR INJURY TO A PREGNANT WOMAN, THE INDIVIDUAL RESPONSIBLE FOR THE  
8 NEGLIGENCE, ASSAULT, OR INJURY TO THE PREGNANT WOMAN IS LIABLE  
9 FOR DAMAGES.

1       (2) AN ACTION UNDER THIS SECTION MAY BE BROUGHT BY A PARENT,  
2 SIBLING, OR GRANDPARENT OF THE INJURED OR DECEASED UNBORN CHILD.  
3 WITHIN 30 DAYS OF THE COMMENCEMENT OF AN ACTION, THE PLAINTIFF  
4 SHALL SERVE A COPY OF THE COMPLAINT AND NOTICE AS PRESCRIBED IN  
5 SUBSECTION (4) UPON THE PERSON OR PERSONS WHO MAY BE ENTITLED TO  
6 DAMAGES UNDER SUBSECTION (3) IN THE MANNER AND METHOD PROVIDED IN  
7 THE RULES APPLICABLE TO PROBATE COURT PROCEEDINGS.

8       (3) SUBJECT TO SECTION 251 OF THE REVISED PROBATE CODE, ACT  
9 NO. 642 OF THE PUBLIC ACTS OF 1978, BEING SECTION 700.251 OF THE  
10 MICHIGAN COMPILED LAWS, THE PERSON OR PERSONS WHO MAY BE ENTITLED  
11 TO DAMAGES UNDER THIS SECTION ARE LIMITED TO THE PARENTS, SIB-  
12 LINGS, AND GRANDPARENTS OF THE INJURED OR DECEASED UNBORN CHILD  
13 WHO SUFFER DAMAGES AND SURVIVE THE DECEASED.

14       (4) THE NOTICE REQUIRED IN SUBSECTION (2) SHALL CONTAIN THE  
15 FOLLOWING:

16       (A) A STATEMENT THAT TO RECOVER DAMAGES UNDER THIS SECTION  
17 THE PERSON WHO MAY BE ENTITLED TO DAMAGES MUST PRESENT A CLAIM  
18 FOR DAMAGES TO THE PLAINTIFF'S ATTORNEY ON OR BEFORE THE DATE SET  
19 FOR HEARING ON THE MOTION FOR DISTRIBUTION OF THE PROCEEDS UNDER  
20 SUBSECTION (6) AND THAT FAILURE TO PRESENT A CLAIM FOR DAMAGES  
21 WITHIN THE TIME PROVIDED SHALL BAR THE PERSON FROM MAKING A CLAIM  
22 TO ANY OF THE PROCEEDS.

23       (B) THE NAME AND ADDRESS OF THE PLAINTIFF AND THE  
24 PLAINTIFF'S ATTORNEY.

25       (C) A STATEMENT THAT THE PLAINTIFF'S ATTORNEY SHALL BE  
26 ADVISED BY THE PERSON RECEIVING THE NOTICE WITHIN 60 DAYS AFTER  
27 THE MAILING OF THE NOTICE OF ANY MATERIAL FACT WHICH MAY

1 CONSTITUTE EVIDENCE OF ANY CLAIM FOR DAMAGES AND THAT FAILURE TO  
2 DO SO MAY ADVERSELY AFFECT HIS OR HER RECOVERY OF DAMAGES AND  
3 COULD BAR HIS OR HER RIGHT TO ANY CLAIM AT A HEARING TO DISTRIB-  
4 UTE PROCEEDS.

5 (D) A STATEMENT THAT HE OR SHE WILL BE NOTIFIED OF A HEARING  
6 TO DETERMINE THE DISTRIBUTION OF THE PROCEEDS AFTER THE ADJUDICA-  
7 TION OR SETTLEMENT OF THE CLAIM FOR DAMAGES.

8 (5) IF, FOR THE PURPOSE OF SETTLING A CLAIM FOR DAMAGES FOR  
9 DEATH OR INJURY TO AN UNBORN CHILD WHERE AN ACTION FOR THOSE DAM-  
10 AGES IS PENDING, A MOTION IS FILED IN THE COURT WHERE THE ACTION  
11 IS PENDING BY THE PLAINTIFF ASKING LEAVE OF THE COURT TO SETTLE  
12 THE CLAIM, THE COURT SHALL, WITH OR WITHOUT NOTICE, CONDUCT A  
13 HEARING AND APPROVE OR REJECT THE PROPOSED SETTLEMENT.

14 (6) IN EVERY ACTION UNDER THIS SECTION THE COURT OR JURY MAY  
15 AWARD DAMAGES AS THE COURT OR JURY CONSIDERS FAIR AND EQUITABLE,  
16 UNDER ALL THE CIRCUMSTANCES INCLUDING REASONABLE MEDICAL, HOSPI-  
17 TAL, FUNERAL, AND BURIAL EXPENSES FOR WHICH THE PLAINTIFF IS  
18 LIABLE; REASONABLE COMPENSATION FOR THE PAIN AND SUFFERING UNDER-  
19 GONE BY THE INJURED UNBORN CHILD, AND FOR THE PAIN AND SUFFERING,  
20 WHILE CONSCIOUS, UNDERGONE BY THE DECEASED UNBORN CHILD DURING  
21 THE PERIOD INTERVENING BETWEEN THE TIME OF THE INJURY AND DEATH.  
22 THE PROCEEDS OF A SETTLEMENT OR JUDGMENT IN AN ACTION FOR DAMAGES  
23 FOR THE DEATH OF OR INJURY TO AN UNBORN CHILD SHALL BE DISTRIB-  
24 UTED AS FOLLOWS:

25 (A) THE PLAINTIFF'S ATTORNEY SHALL FILE WITH THE COURT A  
26 MOTION FOR AUTHORITY TO DISTRIBUTE THE PROCEEDS. UPON THE FILING  
27 OF THE MOTION, THE COURT SHALL ORDER A HEARING.

1 (B) UNLESS WAIVED, NOTICE OF THE HEARING SHALL BE SERVED  
2 UPON ALL PERSONS WHO MAY BE ENTITLED TO DAMAGES UNDER SUBSECTION  
3 (3) IN THE TIME, MANNER, AND METHOD PROVIDED IN THE RULES APPLI-  
4 CABLE TO PROBATE COURT PROCEEDINGS.

5 (C) IF ANY INTERESTED PERSON IS A MINOR, A DISAPPEARED  
6 PERSON AS DEFINED IN SECTION 4 OF THE REVISED PROBATE CODE, ACT  
7 NO. 642 OF THE PUBLIC ACTS OF 1978, BEING SECTION 700.4 OF THE  
8 MICHIGAN COMPILED LAWS, OR A LEGALLY INCAPACITATED PERSON FOR  
9 WHOM A FIDUCIARY IS NOT APPOINTED, A FIDUCIARY OR GUARDIAN AD  
10 LITEM SHALL BE FIRST APPOINTED, AND THE NOTICE PROVIDED IN SUBDI-  
11 VISION (B) SHALL BE GIVEN TO THE FIDUCIARY OR GUARDIAN AD LITEM  
12 OF THE MINOR, DISAPPEARED PERSON, OR LEGALLY INCAPACITATED  
13 PERSON.

14 (D) AFTER A HEARING BY THE COURT, THE COURT SHALL ORDER PAY-  
15 MENT FROM THE PROCEEDS OF THE REASONABLE MEDICAL, HOSPITAL,  
16 FUNERAL, AND BURIAL EXPENSES OF THE DECEASED OR INJURED UNBORN  
17 CHILD FOR WHICH THE PLAINTIFF IS LIABLE. THE PROCEEDS SHALL NOT  
18 BE APPLIED TO THE PAYMENT OF ANY OTHER CHARGES INCURRED BY THE  
19 PLAINTIFF. THE COURT SHALL THEN ENTER AN ORDER DISTRIBUTING THE  
20 PROCEEDS TO THOSE PERSONS DESIGNATED IN SUBSECTION (3) WHO SUFF-  
21 ERED DAMAGES AND TO THE PLAINTIFF FOR COMPENSATION FOR CONSCIOUS  
22 PAIN AND SUFFERING, IF ANY, IN THE AMOUNT THAT THE COURT OR JURY  
23 CONSIDERS FAIR AND EQUITABLE CONSIDERING THE RELATIVE DAMAGES  
24 SUSTAINED BY EACH OF THE PERSONS AND THE PLAINTIFF. IF THERE IS  
25 A SPECIAL VERDICT BY A JURY IN AN ACTION FOR INJURY TO OR DEATH  
26 OF AN UNBORN CHILD, DAMAGES SHALL BE DISTRIBUTED AS PROVIDED IN  
27 THE SPECIAL VERDICT.

1 (E) IF NONE OF THE PERSONS ENTITLED TO THE PROCEEDS IS A  
2 MINOR, A DISAPPEARED PERSON, OR A LEGALLY INCAPACITATED PERSON  
3 AND ALL OF THE PERSONS ENTITLED TO THE PROCEEDS EXECUTE A VERI-  
4 FIED STIPULATION OR AGREEMENT IN WRITING IN WHICH THE PORTION OF  
5 THE PROCEEDS TO BE DISTRIBUTED TO EACH OF THE PERSONS IS SPECI-  
6 FIED, THE ORDER OF THE COURT SHALL BE ENTERED IN ACCORDANCE WITH  
7 THE STIPULATION OR AGREEMENT.

8 (7) A PERSON WHO MAY BE ENTITLED TO DAMAGES UNDER THIS SEC-  
9 TION MUST PRESENT A CLAIM FOR DAMAGES TO THE PLAINTIFF'S ATTORNEY  
10 ON OR BEFORE THE DATE SET FOR HEARING ON THE MOTION FOR DISTRIBU-  
11 TION OF THE PROCEEDS UNDER SUBSECTION (6). THE FAILURE TO  
12 PRESENT A CLAIM FOR DAMAGES WITHIN THE TIME PROVIDED SHALL BAR  
13 THE PERSON FROM MAKING A CLAIM TO ANY OF THE PROCEEDS.

14 (8) A PERSON WHO MAY BE ENTITLED TO DAMAGES UNDER THIS SEC-  
15 TION SHALL ADVISE THE ATTORNEY FOR THE PLAINTIFF WITHIN 60 DAYS  
16 AFTER SERVICE OF THE COMPLAINT AND NOTICE AS PROVIDED FOR UNDER  
17 SUBSECTION (2) OF ANY MATERIAL FACT OF WHICH THE PERSON HAS  
18 KNOWLEDGE AND THAT MAY CONSTITUTE EVIDENCE OF ANY CLAIM FOR  
19 DAMAGES. THE PERSON'S RIGHT TO CLAIM AT A HEARING ANY PROCEEDS  
20 MAY BE BARRED BY THE COURT IF THE PERSON FAILS TO ADVISE THE  
21 PLAINTIFF AS PRESCRIBED IN THIS SUBSECTION.

22 (9) IF A CLAIM UNDER THIS SECTION IS TO BE SETTLED AND A  
23 CIVIL ACTION FOR INJURY TO OR DEATH OF AN UNBORN CHILD IS NOT  
24 PENDING UNDER THIS SECTION, THE PROCEDURES PRESCRIBED IN SECTIONS  
25 221 AND 222 OF THE REVISED PROBATE CODE, ACT NO. 642 OF THE  
26 PUBLIC ACTS OF 1978, BEING SECTIONS 700.221 AND 700.222 OF THE

1 MICHIGAN COMPILED LAWS, SHALL BE APPLICABLE TO THE DISTRIBUTION  
2 OF THE PROCEEDS.

3 (10) THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

4 (A) AN ACT COMMITTED BY THE MOTHER OF AN UNBORN CHILD.

5 (B) A MEDICAL PROCEDURE PERFORMED BY A PHYSICIAN OR OTHER  
6 LICENSED MEDICAL PROFESSIONAL AT THE REQUEST OF A MOTHER OF AN  
7 UNBORN CHILD OR THE MOTHER'S LEGAL GUARDIAN OR THE LAWFUL DISPEN-  
8 SATION OR ADMINISTRATION OF LAWFULLY PRESCRIBED MEDICATION.

9 (C) AN ACT COMMITTED IN LAWFUL SELF-DEFENSE OR DEFENSE OF  
10 ANOTHER, OR WHICH IS OTHERWISE LEGALLY JUSTIFIED OR EXCUSED.

11 (11) AS USED IN THIS SECTION:

12 (A) "PHYSICIAN" MEANS A PERSON LICENSED BY THE STATE TO  
13 ENGAGE IN THE PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND  
14 SURGERY UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, ACT NO. 368  
15 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.16101 TO 333.18838  
16 OF THE MICHIGAN COMPILED LAWS.

17 (B) "UNBORN CHILD" MEANS THE LIVE UNBORN OFFSPRING OF A  
18 HUMAN BEING AT ANY TIME OR STAGE OF DEVELOPMENT FROM CONCEPTION  
19 UNTIL BIRTH.