

SENATE BILL No. 1150

March 15, 2006, Introduced by Senator PATTERSON and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judiciary act of 1961,"
by amending section 2912e (MCL 600.2912e), as amended by 1993 PA
78.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2912e. (1) In an action alleging medical malpractice,
2 within 21 days after the plaintiff has ~~filed~~ **SERVED** an affidavit
3 in compliance with section 2912d, the defendant shall file an
4 answer to the complaint. Subject to subsection (2), the defendant
5 or, if the defendant is represented by an attorney, the defendant's
6 attorney shall file, not later than 91 days after the plaintiff or
7 the plaintiff's attorney files the affidavit required under section

1 2912d OR 112 DAYS AFTER SERVICE ON THE DEFENDANT OF THE COMPLAINT,
2 WHICHEVER IS LATER, an affidavit of meritorious defense signed by a
3 health professional who the defendant's attorney reasonably
4 believes meets the requirements for an expert witness under section
5 2169. The affidavit of meritorious defense shall certify that the
6 health professional has reviewed the complaint and all medical
7 records supplied to him or her by the defendant's attorney
8 concerning the allegations contained in the complaint and shall
9 contain a statement of each of the following:

10 (a) The factual basis for each defense to the claims made
11 against the defendant in the complaint.

12 (b) The standard of practice or care that the health
13 professional or health facility named as a defendant in the
14 complaint claims to be applicable to the action and that the health
15 professional or health facility complied with that standard.

16 (c) The manner in which it is claimed by the health
17 professional or health facility named as a defendant in the
18 complaint that there was compliance with the applicable standard of
19 practice or care.

20 (d) The manner in which the health professional or health
21 facility named as a defendant in the complaint contends that the
22 alleged injury or alleged damage to the plaintiff is not related to
23 the care and treatment rendered.

24 (2) If the plaintiff in an action alleging medical malpractice
25 fails to allow access to medical records as required under section
26 ~~2912b(6)~~ **2912B(5)**, the affidavit required under subsection (1) may
27 be filed within 91 days after filing an answer to the complaint.

1 (3) SUBJECT TO SUBSECTION (6) AND EXCEPT FOR A FORMAL DEFECT
2 TO WHICH SUBSECTION (5) APPLIES, A PLAINTIFF WHO WISHES TO
3 CHALLENGE AN AFFIDAVIT OF MERITORIOUS DEFENSE FILED UNDER THIS
4 SECTION BECAUSE OF A FORMAL DEFECT SHALL, WITHIN 91 DAYS AFTER THE
5 AFFIDAVIT IS SERVED ON THE PLAINTIFF, FILE WITH THE COURT AND SERVE
6 ON THE DEFENDANT A WRITTEN CHALLENGE STATING THE ALLEGED DEFECT
7 WITH SUFFICIENT SPECIFICITY TO GIVE THE DEFENDANT NOTICE OF THE
8 DEFECT. A DEFENDANT WHO IS SERVED WITH A CHALLENGE UNDER THIS
9 SUBSECTION OR A MOTION BASED ON A FORMAL DEFECT UNDER SUBSECTION
10 (5) MAY FILE AND SERVE AN AFFIDAVIT CORRECTING ONLY THE ALLEGED
11 DEFECT WITHIN 63 DAYS AFTER BEING SERVED WITH THE CHALLENGE OR
12 MOTION. THE CORRECTING AFFIDAVIT SHALL BE GIVEN BY THE SAME AFFIANT
13 WHO GAVE THE ORIGINAL AFFIDAVIT UNLESS THE ORIGINAL AFFIANT HAS
14 BECOME UNABLE TO GIVE AN AFFIDAVIT BECAUSE OF DEATH OR DISABILITY.
15 THE CORRECTING AFFIDAVIT RELATES BACK TO THE DATE THE ORIGINAL
16 AFFIDAVIT WAS FILED UNLESS OTHERWISE ORDERED BY THE COURT.

17 (4) SUBJECT TO SUBSECTION (6), A PLAINTIFF WHO WISHES TO
18 CHALLENGE AN AFFIDAVIT OF MERITORIOUS DEFENSE THAT HAS BEEN
19 CHALLENGED UNDER SUBSECTION (3) AND NOT CORRECTED OR AN AFFIDAVIT
20 THAT HAS BEEN CORRECTED UNDER SUBSECTION (3), BECAUSE OF A FORMAL
21 DEFECT, SHALL FILE A MOTION CHALLENGING THE AFFIDAVIT NOT LATER
22 THAN 21 DAYS AFTER THE CORRECTED AFFIDAVIT IS SERVED OR, IF A
23 CORRECTED AFFIDAVIT IS NOT SERVED, 21 DAYS AFTER THE TIME TO SERVE
24 THE CORRECTED AFFIDAVIT UNDER SUBSECTION (3) HAS PASSED.

25 (5) SUBJECT TO SUBSECTION (6), A PLAINTIFF WHO WISHES TO
26 CHALLENGE AN AFFIDAVIT OF MERITORIOUS DEFENSE FILED UNDER THIS
27 SECTION BECAUSE OF A SUBSTANTIVE DEFECT OR A FORMAL DEFECT THAT THE

1 PLAINTIFF FOR GOOD CAUSE DID NOT DISCOVER BEFORE THE TIME FOR
2 SERVING A CHALLENGE UNDER SUBSECTION (3) SHALL FILE A MOTION
3 CHALLENGING THE DEFECT NOT LATER THAN 35 DAYS AFTER THE ORDERED
4 CLOSE OF DISCOVERY IN THE ACTION OR 35 DAYS AFTER THE COMPLETION OF
5 THE DEPOSITION OF THE AFFIANT, WHICHEVER IS LATER. THE TIME TO
6 CHALLENGE AN AFFIDAVIT OF MERITORIOUS DEFENSE UNDER THIS SUBSECTION
7 MAY BE EXTENDED BY THE PARTIES IN A WRITTEN STIPULATION FILED WITH
8 THE COURT OR BY ORDER OF THE COURT ON A SHOWING OF GOOD CAUSE. A
9 FORMAL DEFECT DESCRIBED IN THIS SUBSECTION MAY BE CORRECTED UNDER
10 SUBSECTION (3). A SUBSTANTIVE DEFECT MAY NOT BE CORRECTED UNDER
11 SUBSECTION (3).

12 (6) AN AFFIDAVIT OF MERITORIOUS DEFENSE FILED UNDER THIS
13 SECTION MAY BE CHALLENGED AT ANY TIME FOR A DEFECT RESULTING FROM
14 THE INTENTIONAL MISCONDUCT OF THE DEFENDANT OR THE DEFENDANT'S
15 ATTORNEY. A DEFECT DESCRIBED IN THIS SUBSECTION MAY NOT BE
16 CORRECTED UNDER SUBSECTION (3).

17 (7) IF AN AFFIDAVIT REQUIRED BY THIS SECTION IS TAKEN BEFORE A
18 NOTARY PUBLIC OR JUSTICE OF THE PEACE IN ANOTHER STATE, IT IS NOT
19 NECESSARY THAT THE SIGNATURE AND OFFICIAL STATUS OF THE NOTARY
20 PUBLIC OR JUSTICE OF THE PEACE BE CERTIFIED BY THE CLERK OF A COURT
21 AS OTHERWISE REQUIRED BY SECTION 2102(4).

22 (8) AS USED IN THIS SECTION:

23 (A) "FORMAL DEFECT" MEANS A DEFECT TO WHICH 1 OR BOTH OF THE
24 FOLLOWING APPLY:

25 (i) THE DEFECT IS IN THE NOTARIZATION OF THE AFFIDAVIT.

26 (ii) THE DEFECT RESULTS FROM AN INADVERTENT CLERICAL ERROR, A
27 TYPOGRAPHICAL, GRAMMATICAL, OR PUNCTUATION ERROR, IMPROPER

1 PAGINATION, OR MISSING PAGES, INCLUDING A PAGE WITH A SIGNATURE IF
2 THE SIGNED PAGE WAS IN EXISTENCE AT THE TIME THE AFFIDAVIT WAS
3 REQUIRED TO BE FILED UNDER SUBSECTION (1) OR (2).

4 (B) "SUBSTANTIVE DEFECT" MEANS A DEFECT THAT IS NOT A FORMAL
5 DEFECT.

6 Enacting section 1. This amendatory act does not take effect
7 unless Senate Bill No. 1149

8 of the 93rd Legislature is enacted into law.

9 Enacting section 2. This amendatory act applies only to civil
10 actions filed on or after the effective date of this amendatory
11 act.