



SENATE BILL No. 270

January 28, 1993, Introduced by Senators DE GROW,
VAN REGENMORTER, GAST, CISKY, WELBORN, WARTNER, EMMONS,
SCHWARZ, EHLERS, GEAKE, ARTHURHULTZ, DI NELLO, KOIVISTO,
BOUCHARD, DUNASKISS, PRIDNIA, and MC MANUS and referred
to the Committee on Judiciary.

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e,
5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of
1961, entitled as amended

"Revised judicature act of 1961,"

sections 1483, 2169, 2912d, 2912e, and 5838a as added and section
5851 as amended by Act No. 178 of the Public Acts of 1986 and
section 6013 as amended by Act No. 50 of the Public Acts of 1987,
being sections 600.1483, 600.2169, 600.2912a, 600.2912d,
600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the
Michigan Compiled Laws; to add sections 955, 2912b, 2912f, 2912g,
and 2912h; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Section 1. Sections 1483, 2169, 2912a, 2912d, 2912e, 5838a,
- 2 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961,
- 3 sections 1483, 2169, 2912d, 2912e, and 5838a as added and section

1 5851 as amended by Act No. 178 of the Public Acts of 1986 and
2 section 6013 as amended by Act No. 50 of the Public Acts of 1987,
3 being sections 600.1483, 600.2169, 600.2912a, 600.2912d,
4 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the
5 Michigan Compiled Laws, are amended and sections 955, 2912b,
6 2912f, 2912g, and 2912h are added to read as follows:

7 SEC. 955. (1) AS USED IN THIS SECTION:

8 (A) "CONTINGENCY FEE AGREEMENT" MEANS AN AGREEMENT THAT AN
9 ATTORNEY'S FEE IS DEPENDENT, IN WHOLE OR IN PART, UPON SUCCESSFUL
10 PROSECUTION OR SETTLEMENT OF A CLAIM OR ACTION, OR UPON THE
11 AMOUNT OF RECOVERY.

12 (B) "PROPERLY CHARGEABLE DISBURSEMENTS" MEANS REASONABLE
13 EXPENSES INCURRED AND PAID BY AN ATTORNEY ON A CLIENT'S BEHALF IN
14 PROSECUTING OR SETTLING A CLAIM OR ACTION.

15 (C) "RECOVERY" MEANS THE AMOUNT TO BE PAID TO AN ATTORNEY'S
16 CLIENT AS A RESULT OF A SETTLEMENT OR MONEY JUDGMENT.

17 (2) IN A CLAIM OR ACTION FILED UNDER THIS ACT FOR PERSONAL
18 INJURY OR WRONGFUL DEATH BASED UPON THE ALLEGED CONDUCT OF ANOTH-
19 ER, IF AN ATTORNEY ENTERS INTO A CONTINGENCY FEE AGREEMENT WITH
20 HIS OR HER CLIENT AND IF A RECOVERY RESULTS, THE ATTORNEY'S FEE
21 SHALL NOT EXCEED THE AMOUNTS SET FORTH IN SUBDIVISION (A) OR
22 (B):

23 (A) NOT MORE THAN 40% OF THE FIRST \$5,000.00 OF THE RECOV-
24 ERY; NOT MORE THAN 35% OF THE PORTION OF THE RECOVERY THAT IS
25 MORE THAN \$5,000.00 BUT LESS THAN \$25,000.00; NOT MORE THAN 25%
26 OF THE PORTION OF THE RECOVERY THAT IS \$25,000.00 OR MORE BUT
27 LESS THAN \$250,000.00; NOT MORE THAN 20% OF THE PORTION OF THE

1 RECOVERY THAT IS \$250,000.00 OR MORE BUT LESS THAN \$500,000.00;
2 AND NOT MORE THAN 10% OF THE PORTION OF THE RECOVERY THAT IS
3 \$500,000.00 OR MORE.

4 (B) AS AN ALTERNATIVE TO SUBDIVISION (A), NOT MORE THAN
5 33-1/3% OF THE FIRST \$250,000.00 OF THE RECOVERY; NOT MORE THAN
6 20% OF THE PORTION OF THE RECOVERY THAT IS MORE THAN \$250,000.00
7 BUT LESS THAN \$500,000.00; AND NOT MORE THAN 10% OF THE PORTION
8 OF THE RECOVERY THAT IS MORE THAN \$500,000.00.

9 (3) THE FEES ALLOWED IN SUBSECTION (2) SHALL BE COMPUTED ON
10 THE NET SUM OF THE RECOVERY AFTER DEDUCTING FROM THE RECOVERY THE
11 PROPERLY CHARGEABLE DISBURSEMENTS. IN COMPUTING THE FEE, THE
12 COSTS AS TAXED BY THE COURT ARE NOT COUNTED AS PART OF THE AMOUNT
13 OF THE MONEY JUDGMENT. IF A RECOVERY IS PAYABLE IN INSTALLMENTS,
14 THE FEE IS COMPUTED USING THE PRESENT VALUE OF THE FUTURE
15 PAYMENTS.

16 (4) A CONTINGENCY FEE AGREEMENT MADE BY AN ATTORNEY WITH A
17 CLIENT SHALL BE IN WRITING AND SHALL BE EXECUTED AT THE TIME THE
18 CLIENT RETAINS THE ATTORNEY FOR THE CLAIM OR ACTION THAT IS THE
19 BASIS FOR THE CONTINGENCY FEE AGREEMENT. AN ATTORNEY WHO FAILS
20 TO COMPLY WITH THIS SUBSECTION IS BARRED FROM RECOVERING A FEE IN
21 EXCESS OF THE LOWEST OF THE 2 ALTERNATIVE FEES AVAILABLE UNDER
22 SUBSECTION (2), BUT THE OTHER PROVISIONS OF THE CONTINGENCY FEE
23 AGREEMENT REMAIN ENFORCEABLE.

24 (5) AN ATTORNEY SHALL PROVIDE A COPY OF A CONTINGENCY FEE
25 AGREEMENT TO A CLIENT AT THE TIME THE CONTINGENCY FEE AGREEMENT
26 IS EXECUTED. AN ATTORNEY SHALL INCLUDE A STATEMENT OF HIS OR HER

1 USUAL AND CUSTOMARY HOURLY RATE OF COMPENSATION IN A CONTINGENCY
2 FEE AGREEMENT.

3 (6) AN ATTORNEY WHO ENTERS INTO A CONTINGENCY FEE AGREEMENT
4 THAT VIOLATES SUBSECTION (2) IS BARRED FROM RECOVERING A FEE IN
5 EXCESS OF THE ATTORNEY'S REASONABLE ACTUAL ATTORNEY FEES BASED ON
6 HIS OR HER USUAL AND CUSTOMARY HOURLY RATE OF COMPENSATION, UP TO
7 THE LOWEST OF THE 2 ALTERNATIVE FEES ALLOWED UNDER SUBSECTION
8 (2), BUT THE OTHER PROVISIONS OF THE CONTINGENCY FEE AGREEMENT
9 REMAIN ENFORCEABLE.

10 Sec. 1483. (1) In an action for damages alleging medical
11 malpractice, ~~against a person or party specified in section~~
12 ~~5838a,~~ damages for noneconomic loss ~~which exceeds \$225,000.00~~
13 THAT EXCEED \$250,000.00 PER INCIDENT OF MEDICAL MALPRACTICE shall
14 not be awarded. THE COURT SHALL REDUCE AN AWARD OF DAMAGES FOR
15 NONECONOMIC LOSS IN AN ACTION ALLEGING MEDICAL MALPRACTICE IN
16 EXCESS OF \$250,000.00 TO \$250,000.00. ~~unless 1 or more of the~~
17 ~~following circumstances exist:~~

18 ~~(a) There has been a death.~~

19 ~~(b) There has been an intentional tort.~~

20 ~~(c) A foreign object was wrongfully left in the body of the~~
21 ~~patient.~~

22 ~~(d) The injury involves the reproductive system of the~~
23 ~~patient.~~

24 ~~(e) The discovery of the existence of the claim was pre-~~
25 ~~vented by the fraudulent conduct of a health care provider.~~

26 ~~(f) A limb or organ of the patient was wrongfully removed.~~

1 ~~(g) The patient has lost a vital bodily function.~~

2 (2) In awarding damages in an action alleging medical
3 malpractice, the trier of fact shall itemize damages into DAMAGES
4 FOR economic LOSS and ~~noneconomic~~ damages FOR NONECONOMIC
5 LOSS.

6 (3) IN A JURY TRIAL IN AN ACTION ALLEGING MEDICAL MALPRAC-
7 TICE, THE COURT SHALL NOT APPRISE OR ALLOW EITHER PARTY TO
8 APPRISE THE JURY OF THE LIMITATION ON DAMAGES FOR NONECONOMIC
9 LOSS SET FORTH IN SUBSECTION (1).

10 (4) ~~-(3)-~~ "Noneconomic" AS USED IN THIS SECTION, "NONECONOMIC
11 loss" means damages or loss due to pain, suffering, inconve-
12 nience, physical impairment, physical disfigurement, or other
13 noneconomic loss.

14 (5) ~~-(4)-~~ The STATE TREASURER SHALL ADJUST THE limitation on
15 ~~noneconomic~~ damages FOR NONECONOMIC LOSS set forth in subsec-
16 tion (1) ~~shall be increased~~ by an amount determined by the
17 state treasurer at the end of each calendar year to reflect the
18 cumulative annual percentage ~~increase~~ CHANGE in the consumer
19 price index. As used in this subsection, "consumer price index"
20 means the most comprehensive index of consumer prices available
21 for this state from the bureau of labor statistics of the United
22 States department of labor.

23 Sec. 2169. (1) In an action alleging medical malpractice,
24 ~~if the defendant is a specialist,~~ a person shall not give
25 expert testimony on the appropriate standard of care unless the
26 person is ~~or was a physician licensed to practice medicine or~~
27 ~~osteopathic medicine and surgery or a dentist licensed to~~

1 ~~practice dentistry~~ AS A HEALTH PROFESSIONAL in this STATE or
 2 another state and meets ~~both of~~ the following criteria:

3 (a) ~~Specializes, or specialized~~ IF THE DEFENDANT AGAINST
 4 WHOM THE TESTIMONY IS OFFERED IS A SPECIALIST, SPECIALIZES at the
 5 time of the occurrence ~~which~~ THAT is the basis for the action
 6 ~~—~~ in the same specialty or a related, relevant area of
 7 ~~medicine or osteopathic medicine and surgery or dentistry~~
 8 PRACTICE as the specialist ~~who is the defendant in the medical~~
 9 ~~malpractice action~~ AGAINST WHOM THE TESTIMONY IS OFFERED.

10 HOWEVER, IF THE DEFENDANT AGAINST WHOM THE TESTIMONY IS OFFERED
 11 IS A SPECIALIST CERTIFIED BY THE AMERICAN BOARD OF CERTIFICATION,
 12 THE EXPERT WITNESS MUST BE CERTIFIED BY THE AMERICAN BOARD OF
 13 CERTIFICATION IN THAT SPECIALTY.

14 (b) ~~Devotes, or devoted at the time~~ SUBJECT TO SUBDIVISION
 15 (C), DURING THE YEAR IMMEDIATELY PRECEDING THE DATE of the occur-
 16 rence ~~which~~ THAT is the basis for the action, ~~a substantial~~
 17 ~~portion~~ DEVOTED NOT LESS THAN 80% of his or her professional
 18 time to EITHER OR BOTH OF the FOLLOWING:

19 (i) THE active clinical practice of ~~medicine or osteopathic~~
 20 ~~medicine and surgery or the active clinical practice of dentis-~~
 21 ~~try, or to~~ the SAME HEALTH PROFESSION IN WHICH THE DEFENDANT IS
 22 LICENSED OR, IF THE DEFENDANT IS A SPECIALIST, THE ACTIVE CLINI-
 23 CAL PRACTICE OF THAT SPECIALTY OR A RELATED, RELEVANT AREA OF
 24 PRACTICE.

25 (ii) THE instruction of students in an accredited ~~medical~~
 26 ~~school, osteopathic medical school, or dental~~ HEALTH
 27 PROFESSIONAL school OR ACCREDITED RESIDENCY PROGRAM IN THE SAME

1 HEALTH PROFESSION IN WHICH THE DEFENDANT IS LICENSED OR, IF THE
2 DEFENDANT IS A SPECIALIST, AN ACCREDITED HEALTH PROFESSIONAL
3 SCHOOL OR ACCREDITED RESIDENCY PROGRAM in the same specialty or a
4 related, relevant area of ~~health care as the specialist who is~~
5 ~~the defendant in the medical malpractice action~~ PRACTICE.

6 (C) IF THE DEFENDANT AGAINST WHOM THE TESTIMONY IS OFFERED
7 IS A GENERAL PRACTITIONER, THE EXPERT WITNESS, DURING THE YEAR
8 IMMEDIATELY PRECEDING THE DATE OF THE OCCURRENCE THAT IS THE
9 BASIS FOR THE ACTION, DEVOTED NOT LESS THAN 80% OF HIS OR HER
10 PROFESSIONAL TIME TO ACTIVE CLINICAL PRACTICE AS A GENERAL
11 PRACTITIONER.

12 (2) In determining the qualifications of an expert witness
13 in an action alleging medical malpractice, the court shall, at a
14 minimum, evaluate all of the following:

15 (a) The educational and professional training of the expert
16 witness.

17 (b) The area of specialization of the expert witness.

18 (c) The length of time the expert witness has been engaged
19 in the active clinical practice or instruction of ~~medicine,~~
20 ~~osteopathic medicine and surgery, or dentistry~~ THE HEALTH PRO-
21 FESSION OR THE SPECIALTY OR A RELATED, RELEVANT AREA OF
22 PRACTICE.

23 (d) The relevancy of the expert witness's testimony.

24 (3) This section does not limit the power of the trial court
25 to disqualify an expert witness on grounds other than the quali-
26 fications set forth in this section.

1 (4) In an action alleging medical malpractice, an expert
2 witness shall not testify on a contingency fee basis. A person
3 who violates this subsection is guilty of a misdemeanor.

4 ~~(5) As used in this section:~~

5 ~~(a) "Practice of dentistry" means the practice of dentistry~~
6 ~~as defined in section 16601 of the public health code, Act~~
7 ~~No. 368 of the Public Acts of 1978, being section 333.16601 of~~
8 ~~the Michigan Compiled Laws.~~

9 ~~(b) "Practice of medicine" means the practice of medicine as~~
10 ~~defined in section 17001 of the public health code, Act No. 368~~
11 ~~of the Public Acts of 1978, being section 333.17001 of the~~
12 ~~Michigan Compiled Laws.~~

13 ~~(c) "Practice of osteopathic medicine and surgery" means the~~
14 ~~practice of osteopathic medicine and surgery as defined in sec-~~
15 ~~tion 17501 of the public health code, being section 333.17501 of~~
16 ~~the Michigan Compiled Laws.~~

17 Sec. 2912a. (1) ~~In~~ SUBJECT TO SUBSECTION (2), IN an
18 action alleging malpractice, the plaintiff ~~shall have~~ HAS the
19 burden of proving that in light of the state of the art existing
20 at the time of the alleged malpractice:

21 (a) The defendant, if a general practitioner, failed to pro-
22 vide the plaintiff the recognized standard of acceptable profes-
23 sional practice in the community in which the defendant practices
24 or in a similar community, and that as a proximate result of the
25 defendant failing to provide that standard, the plaintiff suf-
26 fered an injury.

1 (b) The defendant, if a specialist, failed to provide the
2 recognized standard of care within that specialty as reasonably
3 applied in light of the facilities available in the community or
4 other facilities reasonably available under the circumstances,
5 and as a proximate result of the defendant failing to provide
6 that standard, the plaintiff suffered an injury.

7 (2) IN AN ACTION ALLEGING MEDICAL MALPRACTICE, WHETHER THE
8 PLAINTIFF SEEKS TO RECOVER DAMAGES FOR PERSONAL INJURY OR FOR
9 WRONGFUL DEATH, IN PROVING THAT HE OR SHE SUFFERED AN INJURY AS A
10 PROXIMATE RESULT OF THE DEFENDANT'S FAILURE TO PROVIDE THE STAN-
11 DARD DESCRIBED IN SUBSECTION (1) (A) OR (B), THE PLAINTIFF HAS THE
12 BURDEN OF PROVING THAT THE INJURY WAS MORE PROBABLY THAN NOT
13 CAUSED BY THE DEFENDANT'S NEGLIGENCE AND WOULD NOT HAVE OCCURRED
14 BUT FOR THE NEGLIGENCE OF THE DEFENDANT OR NEGLIGENCE OF THE
15 DEFENDANTS IF THE NEGLIGENCE OF MORE THAN 1 DEFENDANT WAS THE
16 PROXIMATE CAUSE OF THE INJURY. IF THE PLAINTIFF SEEKS TO RECOVER
17 DAMAGES FOR WRONGFUL DEATH, AND IF THE PLAINTIFF FAILS TO MEET
18 THE BURDEN OF PROOF REQUIRED UNDER THIS SUBSECTION, THE PLAINTIFF
19 CANNOT RECOVER FOR LOSS OF AN OPPORTUNITY TO SURVIVE.

20 SEC. 2912B. THE LEGISLATURE FINDS AND DECLARES THAT THERE
21 IS A SERIOUS HEALTH CARE LITIGATION PROBLEM IN THIS STATE,
22 RESULTING IN THE HIGH COSTS OF DEFENSIVE MEDICINE AND MEDICAL
23 MALPRACTICE INSURANCE. THIS SEVERELY THREATENS ACCESS TO AND
24 COST CONTROL OF THE HEALTH CARE DELIVERY SYSTEM FOR THE PEOPLE OF
25 THIS STATE AND RESULTS IN A BREAKDOWN OF THE HEALTH CARE DELIVERY
26 SYSTEM, SEVERE HARDSHIPS FOR THE MEDICALLY INDIGENT, A DENIAL OF
27 ACCESS FOR THE ECONOMICALLY DISADVANTAGED, AND DEPLETION OF THE

1 SUPPLY OF PHYSICIANS SUCH AS TO SUBSTANTIALLY WORSEN THE QUALITY
2 OF HEALTH CARE AVAILABLE TO CITIZENS OF THIS STATE. THE LEGISLA-
3 TURE, ACTING WITHIN THE SCOPE OF ITS POLICE POWERS, FINDS THE
4 STATUTORY REMEDY PROVIDED IN THE AMENDATORY ACT THAT ADDED THIS
5 SECTION IS INTENDED TO PROVIDE AN ADEQUATE AND REASONABLE REMEDY
6 WITHIN THE LIMITS OF WHAT THE FOREGOING PUBLIC HEALTH AND SAFETY
7 CONSIDERATIONS PERMIT NOW AND INTO THE FORESEEABLE FUTURE.

8 Sec. 2912d. (1) ~~In an action alleging medical malpractice,~~
9 ~~the complaint shall be accompanied either by security for costs~~
10 ~~or by an affidavit, as required by this section.~~ A PERSON SHALL
11 NOT COMMENCE AN ACTION ALLEGING MEDICAL MALPRACTICE UNLESS THE
12 COMPLAINT IS ACCOMPANIED BY A CERTIFICATE SIGNED BY THE PERSON
13 OR, IF THE PERSON IS REPRESENTED BY AN ATTORNEY, BY THE ATTORNEY
14 REFLECTING THAT THE PERSON HAS COMPLIED WITH SECTION 2912F. IF
15 THE COMPLAINT IS NOT ACCOMPANIED BY THE CERTIFICATE REQUIRED
16 UNDER THIS SUBSECTION, THE COMPLAINT DOES NOT TOLL THE STATUTE OF
17 LIMITATIONS AS PROVIDED IN SECTION 5856(1).

18 (2) ~~Subject to subsection (4), the plaintiff in an action~~
19 ~~alleging medical malpractice shall be in compliance with~~
20 ~~subsection (1) if the plaintiff posts a bond with surety or any~~
21 ~~other equivalent security approved by the court, including cash~~
22 ~~in an escrow account, for costs in an amount of \$2,000.00 within~~
23 ~~91 days after the filing of the complaint.~~ EXCEPT AS OTHERWISE
24 PROVIDED IN THIS SUBSECTION, IN AN ACTION ALLEGING MEDICAL MAL-
25 PRACTICE, THE COURT SHALL DISMISS A CLAIM NOT INCLUDED IN THE
26 NOTICE REQUIRED UNDER SECTION 2912F. THIS SUBSECTION DOES NOT

1 APPLY TO A CLAIM THAT RESULTS FROM PREVIOUSLY UNKNOWN INFORMATION
2 OBTAINED DURING DISCOVERY.

3 ~~(3) The plaintiff in an action alleging medical malpractice~~
4 ~~shall be in compliance with subsection (1) if the plaintiff's~~
5 ~~attorney or, if the plaintiff is not represented by an attorney,~~
6 ~~the plaintiff files an affidavit attesting that the attorney~~
7 ~~signing the complaint, or the plaintiff if not represented by an~~
8 ~~attorney, has obtained a written opinion from a licensed physi-~~
9 ~~cian, dentist, or other appropriate licensed health care provider~~
10 ~~that the claim alleged is meritorious within 91 days after the~~
11 ~~filing of the complaint.~~

12 ~~(4) If upon expiration of the ninety-first day after the~~
13 ~~complaint is filed, or the expiration of the extension period~~
14 ~~described in subsection (5), whichever is later, the plaintiff~~
15 ~~has failed to post security as described in subsection (2) or has~~
16 ~~failed to file an affidavit as described in subsection (3), then~~
17 ~~the court, upon motion of any party or upon the court's own~~
18 ~~motion, shall increase the amount of security required by subsec-~~
19 ~~tion (2). If the plaintiff fails to post the increased security,~~
20 ~~the court may, upon motion and for good cause shown, dismiss the~~
21 ~~complaint without prejudice.~~

22 ~~(5) The court, upon motion of any party and for good cause~~
23 ~~shown, may extend the time for the plaintiff to comply with sub-~~
24 ~~section (2) or (3) for a period not to exceed 91 days.~~

25 ~~(6) Discovery concerning the affidavit, including the writ-~~
26 ~~ten opinion and the identity of the health care provider who~~
27 ~~supplied the opinion, shall be allowed only upon application~~

1 ~~under section 2591 by a prevailing party for costs or attorney~~
2 ~~fees after judgment is entered.~~

3 Sec. 2912e. (1) In an action alleging medical malpractice,
4 within ~~21~~ 60 days after the plaintiff has ~~furnished security~~
5 ~~or~~ filed ~~an affidavit~~ A COMPLAINT ACCOMPANIED BY A CERTIFICATE
6 in compliance with section 2912d, the defendant shall file WITH
7 THE COURT IN WHICH THE COMPLAINT WAS FILED an ~~answer to the~~
8 ~~complaint. Within 91 days after filing an answer, the defendant~~
9 ~~shall furnish security for costs or an affidavit as required~~
10 ~~by~~ OF MERITORIOUS DEFENSE THAT MEETS THE REQUIREMENTS OF this
11 section.

12 (2) ~~Subject to subsections (4) and (5), the defendant in an~~
13 ~~action alleging medical malpractice shall be in compliance with~~
14 ~~subsection (1) if the defendant posts a bond with surety or any~~
15 ~~other equivalent security approved by the court, including cash~~
16 ~~in an escrow account, for costs in an amount of \$2,000.00 within~~
17 ~~91 days after the filing of the answer.~~ AN AFFIDAVIT OF MERITO-
18 RIOUS DEFENSE REQUIRED UNDER THIS SECTION SHALL BE SIGNED BY A
19 HEALTH PROFESSIONAL WHO MEETS THE REQUIREMENTS FOR AN EXPERT WIT-
20 NESS UNDER SECTION 2169. THE AFFIDAVIT SHALL CERTIFY THAT THE
21 HEALTH PROFESSIONAL HAS REVIEWED THE COMPLAINT AND ALL AVAILABLE
22 MEDICAL RECORDS RELEVANT TO THE COMPLAINT AND SHALL CONTAIN A
23 STATEMENT OF EACH OF THE FOLLOWING:

24 (A) THE APPLICABLE STANDARD OF CARE.

25 (B) THE HEALTH PROFESSIONAL'S OPINION THAT THE APPLICABLE
26 STANDARD OF CARE WAS NOT BREACHED BY THE HEALTH PROFESSIONAL OR
27 HEALTH FACILITY NAMED AS A DEFENDANT IN THE COMPLAINT OR THAT

1 THERE ARE 1 OR MORE OTHER MERITORIOUS DEFENSES TO THE CLAIMS IN
2 THE COMPLAINT, OR BOTH.

3 ~~(3) The defendant in an action alleging medical malpractice~~
4 ~~shall be in compliance with subsection (1) if the defendant's~~
5 ~~attorney or, if the defendant is not represented by an attorney,~~
6 ~~the defendant files an affidavit attesting that the attorney~~
7 ~~signing the answer, or the defendant if not represented by an~~
8 ~~attorney has obtained a written opinion from a licensed physi-~~
9 ~~cian, dentist, or other appropriate licensed health care provider~~
10 ~~other than the defendant that there is a meritorious defense to~~
11 ~~the claims in the complaint made against the defendant within 91~~
12 ~~days after the filing of the answer.~~

13 ~~(4) If upon expiration of the ninety-first day after the~~
14 ~~answer has been filed, or the expiration of the extension period~~
15 ~~described in subsection (5), whichever is later, the defendant~~
16 ~~has failed to comply with subsection (2) or (3), then the court,~~
17 ~~upon motion of any party or upon the court's own motion, shall~~
18 ~~increase the amount of security required by subsection (2). If~~
19 ~~the defendant fails to post the increased security, the court,~~
20 ~~upon motion and for good cause shown, may strike the answer and~~
21 ~~enter a default judgment against that defendant.~~

22 ~~(5) The court, upon motion of any party and for good cause~~
23 ~~shown, may extend the time for the defendant to comply with sub-~~
24 ~~section (2) or (3) for a period not to exceed 91 days.~~

25 ~~(6) Discovery concerning the affidavit, including the writ-~~
26 ~~ten opinion and the identity of the health care provider who~~
27 ~~supplied the opinion shall be allowed only upon application under~~

~~1 section 2591 by a prevailing party for costs and attorney fees~~
~~2 after judgment is entered.~~

3 SEC. 2912F. (1) A PERSON SHALL NOT COMMENCE AN ACTION
4 AGAINST A HEALTH PROFESSIONAL OR HEALTH FACILITY ALLEGING MEDICAL
5 MALPRACTICE UNLESS THE PERSON HAS GIVEN THE HEALTH PROFESSIONAL
6 OR HEALTH FACILITY NOTICE UNDER THIS SECTION NOT LESS THAN 180
7 DAYS BEFORE THE ACTION IS COMMENCED AND, SUBJECT TO SECTION
8 5856(2), NOT LESS THAN 180 DAYS BEFORE THE CLAIM WOULD BE BARRED
9 UNDER SECTION 5838A. A PERSON MAY SERVE THE NOTICE REQUIRED
10 UNDER THIS SUBSECTION IN THE SAME MANNER IN WHICH PROCESS IS
11 SERVED UNDER CHAPTER 19.

12 (2) THE NOTICE GIVEN TO A HEALTH PROFESSIONAL OR HEALTH
13 FACILITY UNDER SUBSECTION (1) SHALL NOTIFY THE HEALTH PROFES-
14 SIONAL OR HEALTH FACILITY OF THE BASIS FOR THE CLAIM. THE NOTICE
15 SHALL BE ACCOMPANIED BY AN AFFIDAVIT OF MERIT SIGNED BY A HEALTH
16 PROFESSIONAL WHO MEETS THE REQUIREMENTS FOR AN EXPERT WITNESS
17 UNDER SECTION 2169. THE AFFIDAVIT OF MERIT SHALL CERTIFY THAT
18 THE HEALTH PROFESSIONAL HAS REVIEWED THE COMPLAINT AND ALL AVAIL-
19 ABLE MEDICAL RECORDS RELEVANT TO THE ALLEGATIONS CONTAINED IN THE
20 COMPLAINT AND SHALL CONTAIN A STATEMENT OF EACH OF THE
21 FOLLOWING:

22 (A) THE APPLICABLE STANDARD OF PRACTICE OR CARE.

23 (B) THE HEALTH PROFESSIONAL'S OPINION THAT THE APPLICABLE
24 STANDARD OF PRACTICE OR CARE WAS BREACHED BY THE HEALTH PROFES-
25 SIONAL OR HEALTH FACILITY NAMED AS A DEFENDANT IN THE COMPLAINT.

26 (C) THE ACTIONS THAT SHOULD HAVE BEEN TAKEN OR OMITTED BY
27 THE HEALTH PROFESSIONAL OR HEALTH FACILITY NAMED AS A DEFENDANT

1 IN THE COMPLAINT IN ORDER TO HAVE COMPLIED WITH THE APPLICABLE
2 STANDARD OF PRACTICE OR CARE.

3 (D) THE MANNER IN WHICH THE BREACH OF THE STANDARD OF PRAC-
4 TICE OR CARE WAS THE PROXIMATE CAUSE OF THE INJURY ALLEGED IN THE
5 COMPLAINT.

6 (3) WITHIN 90 DAYS AFTER RECEIPT OF NOTICE UNDER SUBSECTION
7 (1), THE HEALTH PROFESSIONAL OR HEALTH FACILITY AGAINST WHOM THE
8 CLAIM IS MADE SHALL FURNISH TO THE CLAIMANT AN AFFIDAVIT OF MERI-
9 TORIOUS DEFENSE. AN AFFIDAVIT REQUIRED UNDER THIS SUBSECTION
10 SHALL BE SIGNED BY THE HEALTH PROFESSIONAL OR A REPRESENTATIVE OF
11 THE HEALTH FACILITY OR, IF THE HEALTH PROFESSIONAL OR HEALTH
12 FACILITY IS REPRESENTED BY AN ATTORNEY, BY THE ATTORNEY. THE
13 AFFIDAVIT SHALL ATTEST THAT THE HEALTH PROFESSIONAL OR HEALTH
14 FACILITY OR THEIR ATTORNEY HAS OBTAINED A WRITTEN OPINION FROM AN
15 APPROPRIATE HEALTH PROFESSIONAL, NOT THE HEALTH PROFESSIONAL WHO
16 IS THE SUBJECT OF THE CLAIM, THAT THERE IS A MERITORIOUS DEFENSE
17 TO THE CLAIM.

18 (4) WITHIN 14 DAYS AFTER GIVING NOTICE UNDER SUBSECTION (1),
19 THE CLAIMANT SHALL ALLOW THE HEALTH PROFESSIONAL OR HEALTH FACIL-
20 ITY AGAINST WHOM THE CLAIM IS MADE ACCESS TO THE MEDICAL RECORDS
21 RELATED TO THE CLAIM. WITHIN 14 DAYS AFTER RECEIPT OF THE NOTICE
22 REQUIRED UNDER SUBSECTION (1), THE HEALTH PROFESSIONAL OR HEALTH
23 FACILITY SHALL ALLOW THE CLAIMANT ACCESS TO THE HEALTH
24 PROFESSIONAL'S OR HEALTH FACILITY'S MEDICAL RECORDS RELATED TO
25 THE CLAIM.

26 SEC. 2912G. (1) A PERSON WHO HAS GIVEN NOTICE UNDER SECTION
27 2912F OR WHO HAS COMMENCED AN ACTION ALLEGING MEDICAL MALPRACTICE

1 WAIVES FOR PURPOSES OF THAT ACTION THE PRIVILEGE CREATED BY
2 SECTION 2157 AND ANY OTHER SIMILAR PRIVILEGE CREATED BY LAW WITH
3 RESPECT TO A PERSON WHO WAS INVOLVED IN THE ACTS, TRANSACTIONS,
4 EVENTS, OR OCCURRENCES THAT ARE THE BASIS FOR THE ACTION OR WHO
5 PROVIDED CARE OR TREATMENT TO THE PLAINTIFF IN THE ACTION EITHER
6 BEFORE OR AFTER THOSE ACTS, TRANSACTIONS, EVENTS, OR OCCURRENCES,
7 WHETHER OR NOT THE PERSON IS A PARTY TO THE ACTION.

8 (2) PURSUANT TO SUBSECTION (1), A PERSON WHO HAS RECEIVED
9 NOTICE UNDER SECTION 2912F OR WHO HAS BEEN NAMED AS A DEFENDANT
10 IN AN ACTION ALLEGING MEDICAL MALPRACTICE OR THAT PERSON'S ATTOR-
11 NEY OF RECORD MAY COMMUNICATE WITH A PERSON SPECIFIED IN SECTION
12 5838A IN ORDER TO OBTAIN ALL INFORMATION RELEVANT TO THE SUBJECT
13 MATTER OF THE ACTION OR TO PREPARE THE DEFENDANT'S DEFENSE TO THE
14 ACTION.

15 (3) A PERSON WHO DISCLOSES INFORMATION UNDER SUBSECTION (2)
16 TO A DEFENDANT OR THE DEFENDANT'S ATTORNEY OF RECORD DOES NOT
17 VIOLATE SECTION 2157 OR ANY OTHER SIMILAR DUTY OR OBLIGATION CRE-
18 ATED BY LAW AND OWED TO THE PLAINTIFF.

19 SEC. 2912H. (1) A PERSON AND, IF THE PERSON IS REPRESENTED
20 BY AN ATTORNEY, THE PERSON'S ATTORNEY SHALL NOT FILE AN ACTION
21 BASED ON MEDICAL MALPRACTICE UNLESS, BASED UPON A REASONABLE
22 INVESTIGATION, THE PERSON AND THE PERSON'S ATTORNEY HAVE A GOOD
23 FAITH BELIEF IN BOTH OF THE FOLLOWING:

24 (A) THE EXISTENCE OF THE FACTS UPON WHICH THE CLAIM IS
25 BASED.

26 (B) THAT THE FACTS UPON WHICH THE CLAIM IS BASED CONSTITUTE
27 A VALID CLAIM.

1 (2) IF A PERSON AND, IF THE PERSON IS REPRESENTED BY AN
2 ATTORNEY, THE PERSON'S ATTORNEY DO NOT MEET BOTH OF THE REQUIRE-
3 MENTS OF SUBSECTION (1), AND IF BOTH OF THE FOLLOWING OCCUR, THE
4 PERSON AND, IF THE PERSON IS REPRESENTED BY AN ATTORNEY, THE
5 PERSON'S ATTORNEY ARE LIABLE IN A CIVIL ACTION FOR DAMAGES
6 INCURRED BY THE DEFENDANT IN THE ACTION:

7 (A) THE ACTION IS TERMINATED IN FAVOR OF THE DEFENDANT.

8 (B) THE DEFENDANT SUFFERS INJURY OR DAMAGES THAT ARE PROXI-
9 MATELY CAUSED BY THE INSTITUTION OF THE ACTION. FOR PURPOSES OF
10 THIS SUBDIVISION, THE DEFENDANT IS NOT REQUIRED TO PROVE SPECIAL
11 DAMAGES.

12 Sec. 5838a. (1) ~~—A~~ FOR PURPOSES OF THIS ACT, A claim based
13 on the medical malpractice of a person who is ~~—~~ or who holds
14 himself or herself out to be ~~—~~ a licensed health care profes-
15 sional, licensed health facility or agency, employee or agent of
16 a licensed health facility or agency who is engaging in or other-
17 wise assisting in medical care and treatment, or any other health
18 care professional, whether or not THE HEALTH CARE PROFESSIONAL,
19 LICENSED HEALTH FACILITY OR AGENCY, OR EMPLOYEE OR AGENT OF A
20 LICENSED HEALTH FACILITY OR AGENCY IS licensed by the state AND
21 WHETHER OR NOT THE HEALTH CARE PROFESSIONAL, LICENSED HEALTH
22 FACILITY OR AGENCY, OR EMPLOYEE OR AGENT OF A LICENSED HEALTH
23 FACILITY OR AGENCY IS ENGAGED IN THE PRACTICE OF THE HEALTH PRO-
24 FESSIOIN IN A SOLE PROPRIETORSHIP, PARTNERSHIP, PROFESSIONAL COR-
25 PORATION, OR OTHER BUSINESS ENTITY, accrues at the time of the
26 act or omission ~~—which—~~ THAT is the basis for the claim of
27 medical malpractice, regardless of the time the plaintiff

1 discovers or otherwise has knowledge of the claim. As used in
2 this subsection:

3 (a) "Licensed health facility or agency" means a health
4 facility or agency licensed under article 17 of the ~~Public~~
5 PUBLIC health code, Act No. 368 of the Public Acts of 1978, being
6 sections 333.20101 to ~~333.22181~~ 333.22260 of the Michigan
7 Compiled Laws.

8 (b) "Licensed health care professional" means an individual
9 licensed under article 15 of the public health code, Act No. 368
10 of the Public Acts of 1978, being sections 333.16101 to 333.18838
11 of the Michigan Compiled Laws, AND ENGAGED IN THE PRACTICE OF HIS
12 OR HER HEALTH PROFESSION IN A SOLE PROPRIETORSHIP, PARTNERSHIP,
13 PROFESSIONAL CORPORATION, OR OTHER BUSINESS ENTITY. ~~Licensed~~
14 HOWEVER, LICENSED health care professional does not include a
15 sanitarian or a veterinarian.

16 (c) Except as otherwise provided in this subsection, an
17 action involving a claim based on medical malpractice may be com-
18 menced at any time within the applicable period prescribed in
19 ~~sections~~ SECTION 5805 or SECTIONS 5851 to 5856, or within
20 6 months after the plaintiff discovers or should have discovered
21 the existence of the claim, whichever is later. However, the
22 claim shall not be commenced later than 6 years after the date of
23 the act or omission ~~which~~ THAT is the basis for the claim. The
24 burden of proving that the plaintiff, as a result of physical
25 discomfort, appearance, condition, or otherwise, neither discov-
26 ered nor should have discovered the existence of the claim at
27 least 6 months before the expiration of the period otherwise

1 applicable to the claim ~~shall be~~ IS on the plaintiff. A
 2 medical malpractice action ~~which~~ THAT is not commenced within
 3 the time prescribed by this subsection is barred. This subsec-
 4 tion ~~shall~~ DOES not apply, and the plaintiff ~~shall be~~ IS
 5 subject to the period of limitations set forth in subsection (3),
 6 ~~under 1 or more of the following circumstances: (a) If~~ IF dis-
 7 covery of the existence of the claim was prevented by the fraudu-
 8 lent conduct of a health care provider.

9 ~~(b) If a foreign object was wrongfully left in the body of~~
 10 ~~the patient.~~

11 ~~(c) If the injury involves the reproductive system of the~~
 12 ~~plaintiff.~~

13 (3) An action involving a claim based on medical malpractice
 14 under ~~the~~ circumstances ~~described in subsection (2)(a) to (c)~~
 15 THAT THE DISCOVERY OF THE CLAIM WAS PREVENTED BY THE FRAUDULENT
 16 CONDUCT OF A HEALTH CARE PROVIDER may be commenced at any time
 17 within the applicable period prescribed in ~~sections~~
 18 SECTION 5805 or SECTIONS 5851 to 5856, or within 6 months after
 19 the plaintiff discovers or should have discovered the existence
 20 of the claim, whichever is later. The burden of proving that the
 21 plaintiff, as a result of physical discomfort, appearance, condi-
 22 tion or otherwise, neither discovered nor should have discovered
 23 the existence of the claim at least 6 months before the expira-
 24 tion of the period otherwise applicable to the claim ~~shall be~~
 25 IS on the plaintiff. A medical malpractice action ~~which~~ THAT
 26 is not commenced within the time prescribed by this subsection is
 27 barred.

1 Sec. 5851. (1) Except as otherwise provided in ~~subsection~~
2 SUBSECTIONS (7) AND (8), if the person first entitled to make an
3 entry or bring an action UNDER THIS ACT is under 18 years of age,
4 insane, or imprisoned at the time the claim accrues, the person
5 or those claiming under the person ~~shall have~~ HAS 1 year after
6 the disability is removed through death or otherwise, to make the
7 entry or bring the action although the period of limitations has
8 run. This section does not lessen the time provided for in
9 section 5852.

10 (2) The term insane as employed in this chapter means a con-
11 dition of mental derangement such as to prevent the sufferer from
12 comprehending rights he or she is otherwise bound to know and is
13 not dependent on whether or not the person has been judicially
14 declared to be insane.

15 (3) To be ~~deemed~~ CONSIDERED a disability, the infancy,
16 insanity, or imprisonment must exist at the time the claim
17 accrues. If the disability comes into existence after the claim
18 has accrued, A COURT SHALL NOT RECOGNIZE the disability ~~shall~~
19 ~~not be recognized~~ under this section for the purpose of modify-
20 ing the period of limitations.

21 (4) ~~Successive disabilities shall not be tacked. That is,~~
22 A PERSON SHALL NOT TACK SUCCESSIVE DISABILITIES. A COURT SHALL
23 RECOGNIZE only those disabilities ~~which~~ THAT exist at the time
24 the claim first accrues and ~~which~~ THAT disable the person to
25 whom the claim first accrues ~~shall be recognized under this~~
26 ~~section~~ for the purpose of modifying the period of limitations.

1 (5) ~~All~~ A COURT SHALL RECOGNIZE ALL of the disabilities of
 2 infancy, insanity, and imprisonment ~~which~~ THAT disable the
 3 person to whom the claim first accrues at the time the claim
 4 first accrues. ~~shall be recognized. That is,~~ A COURT SHALL
 5 COUNT the year of grace provided in this section ~~shall be~~
 6 ~~counted~~ from the termination of the last disability to the
 7 person to whom the claim originally accrued ~~which~~ THAT has con-
 8 tinued from the time the claim accrued, whether this disability
 9 terminates because of the death of the person disabled or for
 10 some other reason.

11 (6) With respect to a claim accruing before the effective
 12 date of the age of majority act of 1971, Act No. 79 of the Public
 13 Acts of 1971, being sections 722.51 to 722.55 of the Michigan
 14 Compiled Laws, THE disability of infancy ~~shall be considered~~ IS
 15 removed as of the effective date of Act No. 79 of the Public Acts
 16 of 1971, as to persons who were at least 18 years of age but less
 17 than 21 years of age on January 1, 1972, and ~~shall be~~
 18 ~~considered~~ IS removed as of the eighteenth birthday of a person
 19 who was under 18 years of age on January 1, 1972.

20 (7) If ~~—~~ at the time a claim alleging medical malpractice
 21 accrues to a person under section 5838a ~~—~~ the person is ~~13~~ 8
 22 years of age or less, A PERSON SHALL NOT BRING an action based on
 23 the claim ~~shall not be brought~~ unless the action is commenced
 24 on or before the person's ~~fifteenth~~ TENTH birthday. If ~~—~~ at
 25 the time a claim alleging medical malpractice accrues to a person
 26 under section 5838a ~~—~~ the person is more than ~~13~~ 8 years of

1 age, he or she ~~shall be~~ IS subject to the period of limitations
2 set forth in section 5838a.

3 (8) IF AT THE TIME A CLAIM ALLEGING MEDICAL MALPRACTICE
4 ACCRUES TO A PERSON UNDER SECTION 5838A THE PERSON IS UNDER THE
5 DISABILITY OF INSANITY, THE GRACE PERIOD UNDER SUBSECTION (1)
6 DOES NOT APPLY IF A LEGAL GUARDIAN IS APPOINTED FOR THE PERSON
7 WITH SUFFICIENT AUTHORITY TO BRING AN ACTION UNDER THIS ACT. THE
8 GRACE PERIOD UNDER SUBSECTION (1) DOES NOT APPLY TO A PERSON
9 UNDER THE DISABILITY OF INSANITY OR IMPRISONMENT AFTER THE EXPI-
10 RATION OF THE MAXIMUM 6-YEAR TIME PERIOD SET FORTH IN
11 SECTION 5838A(2), UNLESS DISCOVERY OF THE EXISTENCE OF THE CLAIM
12 WAS PREVENTED BY THE FRAUDULENT CONDUCT OF A HEALTH CARE PROVID-
13 ER, AS PROVIDED IN SECTION 5838A(2).

14 Sec. 5856. (1) The statutes of limitations are tolled
15 ~~when~~ IF:

16 (A) ~~(1) the~~ SUBJECT TO SECTION 2912D(1), THE complaint is
17 filed and a copy of the summons and complaint are served on the
18 defendant. ~~, or when~~

19 (B) ~~(2) jurisdiction~~ JURISDICTION over the defendant is
20 otherwise acquired. ~~, or when~~

21 (C) ~~(3) the~~ SUBJECT TO SECTION 2912D(1), THE complaint is
22 filed and a copy of the summons and complaint in good faith ~~,~~
23 are placed in the hands of an officer for immediate service, but
24 in this case the statute ~~shall~~ IS not ~~be~~ tolled longer than
25 90 days ~~thereafter~~ AFTER THE COPY OF THE SUMMONS AND COMPLAINT
26 IS RECEIVED BY THE OFFICER.

1 (2) IF A PERSON WHO COMMENCES AN ACTION ALLEGING MEDICAL
2 MALPRACTICE AGAINST A PERSON SPECIFIED IN SECTION 5838A FAILS TO
3 GIVE NOTICE UNDER SECTION 2912F WITHIN 180 DAYS BEFORE THE CLAIM
4 WOULD BE BARRED UNDER SECTION 5838A, AS REQUIRED UNDER SECTION
5 2912F, THE COURT IN WHICH THE ACTION IS FILED MAY TOLL THE PERIOD
6 OF LIMITATIONS UNDER SECTION 5838A FOR A PERIOD OF NOT MORE THAN
7 180 DAYS UPON MOTION OF A PARTY FOR GOOD CAUSE SHOWN DUE TO
8 UNFORESEEN CIRCUMSTANCES.

9 Sec. 6013. (1) Interest shall be allowed on a money judgment
10 recovered in a civil action, as provided in this section. ~~—~~
11 ~~except that~~ HOWEVER, for complaints filed UNDER THIS ACT on or
12 after October 1, 1986, interest shall not be allowed on future
13 damages from the date of filing the complaint to the date of
14 entry of the judgment OR FINAL DECISION. As used in this subsec-
15 tion, "future damages" means that term as defined in section
16 6301.

17 (2) For complaints filed before June 1, 1980, in an action
18 involving other than a written instrument having a rate of inter-
19 est exceeding 6% per year, the interest on the judgment shall be
20 calculated from the date of filing the complaint to June 1, 1980,
21 at the rate of 6% per year and on and after June 1, 1980, to the
22 date of satisfaction of the judgment at the rate of 12% per year
23 compounded annually.

24 (3) For complaints filed before June 1, 1980, in an action
25 involving a written instrument having a rate of interest exceed-
26 ing 6% per year, the interest on the judgment shall be calculated
27 from the date of filing the complaint to the date of satisfaction

1 of the judgment at the rate specified in the instrument if the
2 rate was legal at the time the instrument was executed. However,
3 the rate after the date judgment is entered shall not exceed the
4 following:

5 (a) Seven percent per year compounded annually for any
6 period of time between the date judgment is entered and the date
7 of satisfaction of the judgment ~~which~~ THAT elapses before June
8 1, 1980.

9 (b) Thirteen percent per year compounded annually for any
10 period of time between the date judgment is entered and the date
11 of satisfaction of the judgment ~~which~~ THAT elapses after May
12 31, 1980.

13 (4) For complaints filed on or after June 1, 1980, but
14 before January 1, 1987, interest shall be calculated from the
15 date of filing the complaint to the date of satisfaction of the
16 judgment at the rate of 12% per year compounded annually unless
17 the judgment is rendered on a written instrument having a higher
18 rate of interest. In that case interest shall be calculated at
19 the rate specified in the instrument if the rate was legal at the
20 time the instrument was executed. The rate shall not exceed 13%
21 per year compounded annually after the date judgment is entered.

22 (5) For complaints filed on or after January 1, 1987, if a
23 judgment is rendered on a written instrument, interest shall be
24 calculated from the date of filing the complaint to the date of
25 satisfaction of the judgment at the rate of 12% per year com-
26 pounded annually, unless the instrument has a higher rate of
27 interest. In that case interest shall be calculated at the rate

1 specified in the instrument if the rate was legal at the time the
2 instrument was executed. The rate shall not exceed 13% per year
3 compounded annually after the date judgment is entered.

4 (6) Except as otherwise provided in subsection (5) AND
5 SUBJECT TO SUBSECTION (9), for complaints filed on or after
6 January 1, 1987, interest on a money judgment recovered in a
7 civil action UNDER THIS ACT shall be calculated at 6-month inter-
8 vals from the date of filing the complaint at a rate of interest
9 ~~which~~ THAT is equal to 1% plus the average interest rate paid
10 at auctions of 5-year United States treasury notes during the 6
11 months immediately preceding July 1 and January 1, as certified
12 by the state treasurer, and compounded annually, pursuant to this
13 section. INTEREST UNDER THIS SUBSECTION SHALL BE CALCULATED ONLY
14 ON THE AMOUNT OF THE MONEY JUDGMENT ACTUALLY TO BE RECEIVED BY
15 THE PLAINTIFF, EXCLUDING ATTORNEY FEES AND OTHER COSTS.

16 (7) If a bona fide, reasonable written offer of settlement
17 in a civil action based on tort is made by the party against whom
18 the judgment is subsequently rendered AND REJECTED BY THE
19 PLAINTIFF, the court shall order that interest ~~shall~~ not be
20 allowed beyond the date the BONA FIDE, REASONABLE written offer
21 of settlement ~~which is made and rejected by the plaintiff, and~~
22 is filed with the court.

23 (8) Except as otherwise provided in subsection (1), if a
24 bona fide, reasonable written offer of settlement in a civil
25 action based on tort is not made by the party against whom the
26 judgment is subsequently rendered, or is made and ~~that offer~~ is
27 not filed with the court, the court shall order that interest be

1 calculated from the date of filing the complaint to the date of
2 satisfaction of the judgment.

3 (9) Except as otherwise provided in subsection (1), if a
4 bona fide, reasonable written offer of settlement in a civil
5 action based on tort is made by a plaintiff for whom the judgment
6 is subsequently rendered and that offer is rejected and the offer
7 is filed with the court, the court shall order that interest be
8 calculated from the date of the rejection of the offer to the
9 date of satisfaction of the judgment at a rate of interest equal
10 to 2% plus the rate of interest computed under subsection (6).

11 (10) ~~An~~ A BONA FIDE, REASONABLE WRITTEN offer OF
12 SETTLEMENT made pursuant to this section ~~which~~ THAT is not
13 accepted within 21 days after the offer is made ~~shall be~~
14 ~~considered~~ IS rejected. A rejection ~~—~~ under this subsection
15 or otherwise ~~—~~ does not preclude a later offer by either
16 party.

17 (11) As used in this section:

18 (a) "Bona fide, reasonable written offer of settlement"
19 means:

20 (i) With respect to an offer of settlement made by a
21 defendant against whom judgment is subsequently rendered, ~~an~~ A
22 WRITTEN offer of settlement that is not less than 90% of the
23 amount actually received by the plaintiff in the action through
24 judgment.

25 (ii) With respect to an offer of settlement made by a plain-
26 tiff, ~~an~~ A WRITTEN offer of settlement that is not more than

1 110% of the amount actually received by the plaintiff in the
2 action through judgment.

3 (b) "Defendant" means a defendant, a counter-defendant, or a
4 cross-defendant.

5 (c) "Party" means a plaintiff or a defendant.

6 (d) "Plaintiff" means a plaintiff, a counter-plaintiff, or a
7 cross-plaintiff.