

**SUBSTITUTE FOR
HOUSE BILL NO. 5338**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2912d. (1) Subject to subsection (2), the plaintiff in
2 an action alleging medical malpractice or, if the plaintiff is
3 represented by an attorney, the plaintiff's attorney shall file
4 with the complaint an affidavit of merit signed by a health
5 professional who the plaintiff's attorney reasonably believes
6 meets the requirements for an expert witness under section 2169.
7 The affidavit of merit shall certify that the health professional
8 has reviewed the notice and all medical records supplied to him
9 or her by the plaintiff's attorney concerning the allegations
10 contained in the notice and shall contain a statement of each of

1 the following:

2 (a) The applicable standard of practice or care.

3 (b) The health professional's opinion that the applicable
4 standard of practice or care was breached by the health
5 professional or health facility receiving the notice.

6 (c) The actions that should have been taken or omitted by the
7 health professional or health facility in order to have complied
8 with the applicable standard of practice or care.

9 (d) The manner in which the breach of the standard of
10 practice or care was the proximate cause of the injury alleged in
11 the notice.

12 (2) Upon motion of a party for good cause shown, the court in
13 which the complaint is filed may grant the plaintiff or, if the
14 plaintiff is represented by an attorney, the plaintiff's attorney
15 an additional 28 days in which to file the affidavit required
16 under subsection (1).

17 (3) If the defendant in an action alleging medical
18 malpractice fails to allow access to medical records within the
19 time period set forth in section ~~2912b(6)~~ **2912b(5)**, the
20 affidavit required under subsection (1) may be filed within 91
21 days after the filing of the complaint.

22 **(4) Subject to subsection (7) and except for a formal defect**
23 **to which subsection (6) applies, a defendant who wishes to**
24 **challenge an affidavit of merit filed under this section because**
25 **of a formal defect shall, within 91 days after the affidavit is**
26 **served on the defendant, file with the court and serve on the**
27 **plaintiff a written challenge stating the alleged defect with**

1 sufficient specificity to give the plaintiff notice of the
2 defect. A plaintiff who is served with a challenge under this
3 subsection or a motion based on a formal defect under subsection
4 (6) may file and serve an affidavit correcting only the alleged
5 defect within 63 days after being served with the challenge or
6 motion. The correcting affidavit shall be given by the same
7 affiant who gave the original affidavit unless the original
8 affiant has become unable to give an affidavit because of death
9 or disability. The correcting affidavit relates back to the date
10 the original affidavit was filed unless otherwise ordered by the
11 court.

12 (5) Subject to subsection (7), a defendant who wishes to
13 challenge an affidavit of merit that has been challenged under
14 subsection (4) and not corrected or an affidavit that has been
15 corrected under subsection (4), because of a formal defect, shall
16 file a motion challenging the affidavit not later than 21 days
17 after the corrected affidavit is served or, if a corrected
18 affidavit is not served, 21 days after the time to serve the
19 corrected affidavit under subsection (4) has passed.

20 (6) Subject to subsection (7), a defendant who wishes to
21 challenge an affidavit of merit filed under this section because
22 of a substantive defect or a formal defect that the defendant for
23 good cause did not discover before the time for serving a
24 challenge under subsection (4) shall file a motion challenging
25 the defect not later than 35 days after the ordered close of
26 discovery in the action or 35 days after the completion of the
27 deposition of the affiant, whichever is later. The time to

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1 challenge an affidavit of merit under this subsection may be
2 extended by the parties in a written stipulation filed with the
3 court or by order of the court on a showing of good cause. A
4 formal defect described in this subsection may be corrected under
5 subsection (4). A substantive defect may not be corrected under
6 subsection (4).

7 (7) An affidavit of merit filed under this section may be
8 challenged at any time for a defect resulting from the
9 intentional misconduct of the plaintiff or the plaintiff's
10 attorney. A defect described in this subsection may not be
11 corrected under subsection (4).

12 (8) If an affidavit required by this section is taken before
13 a notary public or justice of the peace in another state, it is
14 not necessary that the signature and official status of the
15 notary public or justice of the peace be certified by the clerk
16 of a court as required by section 2102(4).

17 (9) As used in this section:

18 (a) "Formal defect" means a defect to which 1 or both of the
19 following apply:

20 (i) The defect is in the notarization of the affidavit.

21 (ii) The defect results from an inadvertent clerical error,

22 [] a typographical, grammatical, or
23 punctuation error, improper pagination, and missing pages,
24 including a page with a signature if the signed page was in
25 existence at the time the affidavit was required to be filed
26 under subsection (1), (2), or (3).

27 (b) "Substantive defect" means a defect that is not a formal

1 **defect.**

2 Enacting section 1. This amendatory act does not take
3 effect unless House Bill No. 5905 of the 92nd Legislature is
4 enacted into law.

5 Enacting section 2. This amendatory act applies only to
6 civil actions filed on or after the effective date of this
7 amendatory act.