

SUBSTITUTE FOR
HOUSE BILL NO. 5905

A bill to amend 1961 PA 236, entitled
"Revised judicature 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
3 affidavit in compliance with section 2912d, the defendant shall
4 file an answer to the complaint. Subject to subsection (2), the
5 defendant or, if the defendant is represented by an attorney, the
6 defendant's attorney shall file, not later than 91 days after the
7 plaintiff or the plaintiff's attorney files the affidavit
8 required under section 2912d **or 112 days after service on the**
9 **defendant of the complaint, whichever is later**, an affidavit of
10 meritorious defense signed by a health professional who the

1 defendant's attorney reasonably believes meets the requirements
2 for an expert witness under section 2169. The affidavit of
3 meritorious defense shall certify that the health professional
4 has reviewed the complaint and all medical records supplied to
5 him or her by the defendant's attorney concerning the allegations
6 contained in the complaint and shall contain a statement of each
7 of the following:

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

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

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

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

23 (2) If the plaintiff in an action alleging medical
24 malpractice fails to allow access to medical records as required
25 under section ~~2912b(6)~~ **2912b(5)**, the affidavit required under
26 subsection (1) may be filed within 91 days after filing an answer
27 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
5 the affidavit is served on the plaintiff, file with the court and
6 serve on the defendant a written challenge stating the alleged
7 defect with sufficient specificity to give the defendant notice
8 of the defect. A defendant who is served with a challenge under
9 this subsection or a motion based on a formal defect under
10 subsection (5) may file and serve an affidavit correcting only
11 the alleged defect within 63 days after being served with the
12 challenge or motion. The correcting affidavit shall be given by
13 the same affiant who gave the original affidavit unless the
14 original affiant has become unable to give an affidavit because
15 of death or disability. The correcting affidavit relates back to
16 the date the original affidavit was filed unless otherwise
17 ordered by the court.

18 (4) Subject to subsection (6), a plaintiff who wishes to
19 challenge an affidavit of meritorious defense that has been
20 challenged under subsection (3) and not corrected or an affidavit
21 that has been corrected under subsection (3), because of a formal
22 defect, shall file a motion challenging the affidavit not later
23 than 21 days after the corrected affidavit is served or, if a
24 corrected affidavit is not served, 21 days after the time to
25 serve the corrected affidavit under subsection (3) has passed.

26 (5) Subject to subsection (6), a plaintiff who wishes to
27 challenge an affidavit of meritorious defense filed under this

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1 section because of a substantive defect or a formal defect that
2 the plaintiff for good cause did not discover before the time for
3 serving a challenge under subsection (3) shall file a motion
4 challenging the defect not later than 35 days after the ordered
5 close of discovery in the action or 35 days after the completion
6 of the deposition of the affiant, whichever is later. The time
7 to challenge an affidavit of meritorious defense under this
8 subsection may be extended by the parties in a written
9 stipulation filed with the court or by order of the court on a
10 showing of good cause. A formal defect described in this
11 subsection may be corrected under subsection [(3)]. A substantive
12 defect may not be corrected under subsection [(3)].

13 (6) An affidavit of meritorious defense filed under this
14 section may be challenged at any time for a defect resulting from
15 the intentional misconduct of the defendant or the defendant's
16 attorney. A defect described in this subsection may not be
17 corrected under subsection (3).

18 (7) If an affidavit required by this section is taken before
19 a notary public or justice of the peace in another state, it is
20 not necessary that the signature and official status of the
21 notary public or justice of the peace be certified by the clerk
22 of a court as otherwise required by section 2102(4).

23 (8) As used in this section:

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

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

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

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

6 (b) "Substantive defect" means a defect that is not a formal
7 defect.

8 Enacting section 1. This amendatory act does not take
9 effect unless House Bill No. 5338 of the 92nd Legislature is
10 enacted into law.

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