

SENATE BILL No. 690

September 16, 2003, Introduced by Senators GOSCHKA, GEORGE and HARDIMAN and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 5838a (MCL 600.5838a), as amended by 1993 PA 78.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5838a. (1) For purposes of this act, a claim based on
2 the medical malpractice of a person or entity who is or who holds
3 himself or herself out to be a licensed health care professional,
4 licensed health facility or agency, or an employee or agent of a
5 licensed health facility or agency who is engaging in or
6 otherwise assisting in medical care and treatment, whether or not
7 the licensed health care professional, licensed health facility
8 or agency, or their employee or agent is engaged in the practice
9 of the health profession in a sole proprietorship, partnership,
10 professional corporation, or other business entity, accrues at

1 the time of the act or omission that is the basis for the claim
2 of medical malpractice, regardless of the time the plaintiff
3 discovers or otherwise has knowledge of the claim. As used in
4 this subsection:

5 (a) "Licensed health facility or agency" means a health
6 facility or agency licensed under article 17 of the public health
7 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~
8 ~~333.20101 to 333.22260 of the Michigan Compiled Laws 1978~~
9 **PA 368, MCL 333.20101 to 333.22260.**

10 (b) "Licensed health care professional" means an individual
11 licensed or registered under article 15 of the public health
12 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~
13 ~~333.16101 to 333.18838 of the Michigan Compiled Laws 1978~~
14 **PA 368, MCL 333.16101 to 333.18838,** and engaged in the practice
15 of his or her health profession in a sole proprietorship,
16 partnership, professional corporation, or other business entity.
17 However, licensed health care professional does not include a
18 sanitarian or a veterinarian.

19 (2) Except as otherwise provided in this subsection, an
20 action involving a claim based on medical malpractice may be
21 commenced at any time within the applicable period prescribed in
22 section 5805, ~~or~~ sections 5851 to **5854, or section** 5856, or
23 within 6 months after the plaintiff discovers or should have
24 discovered the existence of the claim, whichever is later.
25 However, except as otherwise provided in section 5851(7) or (8),
26 the claim shall not be commenced later than 6 years after the
27 date of the act or omission that is the basis for the claim. The

1 burden of proving that the plaintiff, as a result of physical
2 discomfort, appearance, condition, or otherwise, neither
3 discovered nor should have discovered the existence of the claim
4 at least 6 months before the expiration of the period otherwise
5 applicable to the claim is on the plaintiff. A medical
6 malpractice action that is not commenced within the time
7 prescribed by this subsection is barred. This subsection does
8 not apply, and the plaintiff is subject to the period of
9 limitations set forth in subsection (3), under 1 of the following
10 circumstances:

11 (a) If discovery of the existence of the claim was prevented
12 by the fraudulent conduct of the health care professional against
13 whom the claim is made or a named employee or agent of the health
14 professional against whom the claim is made, or of the health
15 facility against whom the claim is made or a named employee or
16 agent of a health facility against whom the claim is made. **To**
17 **commence an action alleging medical malpractice using the**
18 **extended limitation provided in this subdivision, the plaintiff**
19 **shall file with the complaint a sworn statement setting forth the**
20 **facts constituting the fraudulent concealment and the evidence**
21 **that proves those facts independent of the plaintiff's statements**
22 **and beliefs.**

23 (b) There has been permanent loss of or damage to a
24 reproductive organ resulting in the inability to procreate.

25 (3) An action involving a claim based on medical malpractice
26 under circumstances described in subsection (2)(a) or (b) may be
27 commenced at any time within the applicable period prescribed in

1 section 5805, ~~or~~ sections 5851 to **5854**, or **section** 5856, or
2 within 6 months after the plaintiff discovers or should have
3 discovered the existence of the claim, whichever is later. The
4 burden of proving that the plaintiff, as a result of physical
5 discomfort, appearance, condition or otherwise, neither
6 discovered nor should have discovered the existence of the claim
7 at least 6 months before the expiration of the period otherwise
8 applicable to the claim is on the plaintiff. A medical
9 malpractice action that is not commenced within the time
10 prescribed by this subsection is barred.

11 Enacting section 1. This amendatory act does not take
12 effect unless Senate Bill No. 692
13 of the 92nd Legislature is enacted into
14 law.