

HOUSE BILL No. 5670

May 23, 2012, Introduced by Reps. MacGregor, Johnson and Womack and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2912a. (1) Subject to ~~subsection~~ **SUBSECTIONS (2) AND (3)**,
2 in an action alleging malpractice, the plaintiff has the burden of
3 proving that in light of the state of the art existing at the time
4 of the alleged malpractice:

5 (a) The defendant, if a general practitioner, failed to
6 provide the plaintiff the recognized standard of acceptable
7 professional practice or care in the community in which the
8 defendant practices or in a similar community, and that as a
9 proximate result of the defendant failing to provide that standard,
10 the plaintiff suffered an injury.

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

7 (2) In an action alleging medical malpractice, the plaintiff
8 has the burden of proving that he or she suffered an injury that
9 more probably than not was proximately caused by the negligence of
10 the defendant or defendants. In an action alleging medical
11 malpractice, the plaintiff cannot recover for loss of an
12 opportunity to survive or an opportunity to achieve a better
13 result. ~~unless the opportunity was greater than 50%.~~

14 (3) A PERSON DESCRIBED IN SECTION 5838A(1) IS NOT LIABLE IN AN
15 ACTION ALLEGING MEDICAL MALPRACTICE IF THE PERSON'S CONDUCT AT
16 ISSUE CONSTITUTED THE EXERCISE OF PROFESSIONAL JUDGMENT. FOR
17 PURPOSES OF THIS SUBSECTION, A PERSON EXERCISES PROFESSIONAL
18 JUDGMENT IF THE PERSON ACTS WITH A REASONABLE AND GOOD-FAITH BELIEF
19 THAT THE PERSON'S CONDUCT IS BOTH WELL FOUNDED IN MEDICINE AND IN
20 THE BEST INTERESTS OF THE PATIENT. IN AN ACTION DESCRIBED IN THIS
21 SUBSECTION, ALL OF THE FOLLOWING APPLY:

22 (A) THE ISSUE OF WHETHER AN ACT OR OMISSION WAS AN EXERCISE OF
23 PROFESSIONAL JUDGMENT IS A QUESTION OF LAW FOR THE COURT.

24 (B) IF THE COURT DETERMINES UNDER SUBDIVISION (A) THAT THE
25 PERSON DESCRIBED IN SECTION 5838A(1) DID NOT MEET THE BURDEN OF
26 PROVING THAT THE ACT OR OMISSION WAS AN EXERCISE OF PROFESSIONAL
27 JUDGMENT, THE QUESTION OF WHETHER THE PERSON FAILED TO PROVIDE THE

1 RECOGNIZED STANDARD OF ACCEPTABLE PROFESSIONAL PRACTICE OR CARE IS
2 A QUESTION FOR THE TRIER OF FACT TO DECIDE. THE RULING OF THE COURT
3 UNDER SUBDIVISION (A) IS INADMISSIBLE AS EVIDENCE AT TRIAL, AND THE
4 COURT SHALL NOT PERMIT THE PARTIES' COUNSEL TO ARGUE ANY PROVISION
5 OF THIS SUBSECTION TO A JURY.