

# HOUSE BILL No. 5905

May 13, 2004, Introduced by Rep. Howell and referred to the Committee on Judiciary.

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 an affidavit in  
3 compliance with section 2912d, the defendant shall file an answer  
4 to the complaint. Subject to subsection (2), the defendant or,  
5 if the defendant is represented by an attorney, the defendant's  
6 attorney shall file, not later than 91 days after the plaintiff  
7 or the plaintiff's attorney files the affidavit required under  
8 section 2912d, an affidavit of meritorious defense signed by a  
9 health professional who the defendant's attorney reasonably  
10 believes meets the requirements for an expert witness under

HOUSE BILL No. 5905

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

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

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

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

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

21 (2) If the plaintiff in an action alleging medical  
22 malpractice fails to allow access to medical records as required  
23 under section ~~2912b(6)~~ **2912b(7)**, the affidavit required under  
24 subsection (1) may be filed within 91 days after filing an answer  
25 to the complaint.

26 **(3) The court may, only upon a showing of good cause, allow**  
27 **the amendment or replacement of an affidavit of merit filed in**

1 compliance with subsection (1) or (2) to relate back to the date  
2 of the original filing of the affidavit of merit.

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

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