

HOUSE BILL No. 4124

February 1, 2005, Introduced by Reps. Condino and Plakas and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2962 (MCL 600.2962), as added by 1995 PA 249.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2962. (1) This section applies to an action for
2 **NEGLIGENCE OR** professional malpractice against a certified public
3 accountant. A certified public accountant is liable for civil
4 damages in connection with public accounting services performed by
5 the certified public accountant ~~only~~ in 1 **OR MORE** of the
6 following situations:

7 (a) ~~A~~ **THE LIABILITY ARISES FROM A** negligent act, omission,
8 decision, or other conduct of the certified public accountant ~~if~~
9 **AND** the claimant is ~~the~~ 1 **OR MORE OF THE FOLLOWING:**

1 (i) THE certified public accountant's client.

2 (ii) A PERSON FOR WHOSE BENEFIT AND GUIDANCE THE CERTIFIED
3 PUBLIC ACCOUNTANT'S CLIENT INTENDS TO SUPPLY INFORMATION PREPARED
4 OR CERTIFIED BY THE CERTIFIED PUBLIC ACCOUNTANT.

5 (iii) A PERSON WHO RELIES ON INFORMATION SUPPLIED BY THE
6 CERTIFIED PUBLIC ACCOUNTANT IN A SPECIFIC TRANSACTION IF THE
7 CERTIFIED PUBLIC ACCOUNTANT INTENDS THE INFORMATION TO INFLUENCE
8 THE PERSON OR THE CERTIFIED PUBLIC ACCOUNTANT KNOWS THE PERSON
9 INTENDS TO RELY ON THE INFORMATION.

10 (iv) A PERSON WHO THE CERTIFIED PUBLIC ACCOUNTANT COULD
11 REASONABLY HAVE FORESEEN WOULD OBTAIN AND RELY ON INFORMATION
12 PREPARED OR CERTIFIED BY THE CERTIFIED PUBLIC ACCOUNTANT.

13 (b) ~~An~~ THE LIABILITY ARISES FROM AN act, omission, decision,
14 or conduct of the certified public accountant that constitutes
15 fraud or an intentional misrepresentation.

16 ~~—— (c) A negligent act, omission, decision, or other conduct of~~
17 ~~the certified public accountant if the certified public accountant~~
18 ~~was informed in writing by the client at the time of engagement~~
19 ~~that a primary intent of the client was for the professional public~~
20 ~~accounting services to benefit or influence the person bringing the~~
21 ~~action for civil damages. For the purposes of this subdivision, the~~
22 ~~certified public accountant shall identify in writing to the client~~
23 ~~each person, generic group, or class description that the certified~~
24 ~~public accountant intends to have rely on the services. The~~
25 ~~certified public accountant may be held liable only to each~~
26 ~~identified person, generic group, or class description. The~~
27 ~~certified public accountant's written identification shall include~~

~~each person, generic group, or class description identified by the
client as being benefited or influenced.~~

(2) AS USED IN THIS SECTION:

(A) "CERTIFIED PUBLIC ACCOUNTANT" MEANS AN INDIVIDUAL WHO IS
REGISTERED OR LICENSED OR A FIRM THAT IS LICENSED UNDER ARTICLE 7
OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.720 TO 339.736.

(B) "CLIENT" MEANS THE PERSON DIRECTLY ENGAGING A CERTIFIED
PUBLIC ACCOUNTANT TO PERFORM A PROFESSIONAL ACCOUNTING SERVICE.

(C) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST,
ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED
LIABILITY PARTNERSHIP, ASSOCIATION, JOINT VENTURE, OR GOVERNMENT; A
GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; A PUBLIC
CORPORATION; OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

(D) "PROFESSIONAL ACCOUNTING SERVICE" INCLUDES, BUT IS NOT
LIMITED TO, THE COMPILATION, REVIEW, CERTIFICATION, OR AUDITING OF,
OR THE EXPRESSION OF A PROFESSIONAL OPINION OR OTHER REPORTING ON,
A FINANCIAL STATEMENT OR OTHER INFORMATION COVERING A SPECIFIED
PERIOD OF TIME.

(E) "SPECIFIC TRANSACTION" MEANS A PARTICULAR TRANSACTION
BETWEEN A CLIENT AND A CLAIMANT.