

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senator Schuitmaker

ENROLLED SENATE BILL No. 1296

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending sections 5805 and 5838 (MCL 600.5805 and 600.5838), section 5805 as amended by 2011 PA 162 and section 5838 as amended by 1986 PA 178, and by adding section 5838b.

The People of the State of Michigan enact:

Sec. 5805. (1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.

(2) Subject to subsections (3) and (4), the period of limitations is 2 years for an action charging assault, battery, or false imprisonment.

(3) The period of limitations is 5 years for an action charging assault or battery brought by a person who has been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a person with whom he or she resides or formerly resided.

(4) The period of limitations is 5 years for an action charging assault and battery brought by a person who has been assaulted or battered by an individual with whom he or she has or has had a dating relationship.

(5) The period of limitations is 2 years for an action charging malicious prosecution.

(6) Except as otherwise provided in this chapter, the period of limitations is 2 years for an action charging malpractice.

(7) The period of limitations is 2 years for an action against a sheriff charging misconduct or neglect of office by the sheriff or the sheriff's deputies.

(8) The period of limitations is 2 years after the expiration of the year for which a constable was elected for actions based on the constable's negligence or misconduct as constable.

(9) The period of limitations is 1 year for an action charging libel or slander.

(10) Except as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person, or for injury to a person or property.

(11) The period of limitations is 5 years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a person with whom he or she resides or formerly resided.

(12) The period of limitations is 5 years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by an individual with whom he or she has or has had a dating relationship.

(13) The period of limitations is 3 years for a products liability action. However, in the case of a product that has been in use for not less than 10 years, the plaintiff, in proving a prima facie case, shall be required to do so without benefit of any presumption.

(14) An action against a state licensed architect or professional engineer or licensed professional surveyor arising from professional services rendered is an action charging malpractice subject to the period of limitation contained in subsection (6).

(15) The periods of limitation under this section are subject to any applicable period of repose established in section 5838a, 5838b, or 5839.

(16) The amendments to this section made by 2011 PA 162 apply to causes of action that accrue on or after January 1, 2012.

(17) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

Sec. 5838. (1) Except as otherwise provided in section 5838a or 5838b, a claim based on the malpractice of a person who is, or holds himself or herself out to be, a member of a state licensed profession accrues at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.

(2) Except as otherwise provided in section 5838a or 5838b, an action involving a claim based on malpractice may be commenced at any time within the applicable period prescribed in sections 5805 or 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The plaintiff has the burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim. A malpractice action that is not commenced within the time prescribed by this subsection is barred.

Sec. 5838b. (1) An action for legal malpractice against an attorney-at-law or a law firm shall not be commenced after whichever of the following is earlier:

(a) The expiration of the applicable period of limitations under this chapter.

(b) Six years after the date of the act or omission that is the basis for the claim.

(2) A legal malpractice action that is not commenced within the time prescribed by subsection (1) is barred.

(3) As used in this section:

(a) "Attorney-at-law" means an individual licensed to practice law in this state or elsewhere.

(b) "Law firm" means a person that is primarily engaged in the practice of law, regardless of whether organized as a sole proprietorship, partnership, limited liability partnership, professional limited liability company, professional corporation, or other business entity. Law firm includes a legal services organization.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

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Governor