MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

October 27, 2012
Haworth Inn & Conference Center
Holland, Michigan

Minutes

I. Call to Order

The Chair of the Section, Mark K. Harder, called the meeting to order at 10:25 a.m.

II. Attendance

A. The following officers and members of the Council were in attendance:

Harder, Mark K. – Chair
Imami, Shaheen I. – Secretary
Morrissey, Amy N. – Vice-Chair
Steward, James B. – Treasurer
Sweeney, Thomas F. – Chair-Elect
Ard, W. Josh
Ballard, Christopher A.
Bearup, George F.
Brigman, Constance L.
Clark-Kreuer, Rhonda M.
Kerr, J. David
Lucas, David P.
Lentz, Marguerite M.
Mulkowski, Hon. David M.
Ouellette, Patricia M.
Schnelz, Rebecca A.
Skidmore, David L.
Spica, James P.
Taylor, Robert M.
Teahan, Marlaine C.
Welber, Nancy H.

A total of 21 council members and officers were present representing a quorum.

B. The following officers and members of the Council were absent with excuse:

Sue Allen
Hon. Darlene O’Brien

C. The following officers and members were absent without excuse:

None.

D. The following ex-officio members of the Council were in attendance:

Brower Jr., Robert D.
Gregory, George W.
Joslyn, Robert B.
Little, Nancy L.
Martin, John H.
Schuitmaker, Harold G.
Scott, John A.
E. Others in attendance:

Larry Ferguson  
Geoffrey Vernon  
Kathleen Goetsch  
Lorraine New  
Rebecca Bechler  
Jill Goodell  
Lynn Chard  
Kurt A. Olson  
Michael Lichterman  
Jeanne Murphy  
Michele Marquardt  
Charlie Oftstein  
Rick Mills

III. Minutes of September 8, 2012 Meeting of the Council

The minutes of the September 8, 2012, meeting of the Council were previously distributed. After a brief discussion regarding the combined regular and annual meeting on September 8, 2012, a motion to approve the minutes as to the regular meeting was made by Shaheen I. Imami, with support from Mark K. Harder, the minutes were approved.

IV. Treasurer Report

James B. Steward and Shaheen I. Imami reported and discussed the financial reports for August and September 2012 (which were previously distributed with the Agenda for the meeting). Mr. Steward indicated that an additional printing bill for the Journal may be submitted for FY 2011-2012 based on the timing of prior submissions. Mr. Steward moved for approval of the financial reports, with support from Mr. Imami. The financial reports were approved, with none opposed.

V. Chairperson’s Report

Mark K. Harder thanked George W. Gregory for pushing and creating institutional knowledge for the Section’s officers and members. Mr. Harder thanked the Section’s ex-officios and urged their continued participation and also thanked well-wishes from council members.

Mr. Harder noted that the Chair does not really get to set agendas because the agenda for any given year is often set by outside forces and specific issues that arise during the term. With that understanding Mr. Harder said he has the following goals for his term as Chair:

- To keep things running smoothly, encourage high participation, maintain civility with each other and other stakeholders, and keep the Section financially sound
- To leave things a little better – and hopes that the proposed two-year operational plan and manuals/materials to reflect institutional knowledge will help
- To foster success of individual committees
- To look at how the Council communicates with members of Section – the listserv is the primary vehicle at the moment, but he would like to look at other avenues
• To encourage legislative initiatives that benefit our Section and the public – currently the biggest is the statute of repose because of the direct benefit to our members, but there is also proposed decanting, domestic asset protection trust, insurable interest, and insurance trust/trustee liability legislation in the works.

Mr. Harder discussed the request from Daniel Levy, Chair of the SBM Leadership Liaison Committee and the Director for Law and Policy with the Michigan Department of Civil Rights, that the Section commit to the Diversity Pledge sponsored by the SBM. A general discussion took place on the purpose and perceived need for the Diversity Pledge, other sections’ approaches, and whether the Diversity Pledge is aspirational or intended to be affirmative-action like. The Council determined that, despite our perception that the Section is proactive in seeking participation from all groups, the Diversity Pledge is aspirational and should be adopted. A motion to adopt the Diversity Pledge was made by Nancy Little, with support from David L. Skidmore, and approved on a Council vote of 21-0 in favor of the motion, with no abstentions (this represents a PUBLIC POLICY POSITION and will be reported to the SBM as such).

VI. Report of the Committee on Special Projects

Marlaine C. Teahan reported on the following matters addressed during the CSP meeting earlier in the day:

• Reviewed CSP guidelines

• Reviewed two-year operational plan proposed by Mark K. Harder and Thomas F. Sweeney

• Reviewed the status of foreign guardianship legislation (SB 0539) and discussed whether the committee should move forward or table the issue indefinitely

• Reviewed introduced legislation on digital assets (HB 5929 and HB 5983) and noted that the issue was being addressed by the Committee on Updating Michigan Law chaired by Marguerite Munson Lentz

• Reviewed and discussed proposed changes to statute of repose legislation in light of comments and concerns that it inadvertently lengthens the statute of limitations for legal malpractice. Ms. Teahan reported that CSP recommended that the Council accept Christopher A. Ballard’s proposed revisions as follows:
  
  o Amend MCL 600.5805(15) to include reference MCL 600.5838A and 600.5838B
  
  o Amend proposed MCL 5838B as follows:
    
    ▪ (1) – delete “than”
    
    ▪ (1)(A) – insert “of limitation” after “periods” & replace “Section 5838” with “this Chapter”
    
    ▪ (1)(B) – leave as is
• Give Mark K. Harder the ability to communicate to and liaise with stakeholders and others addressing the proposed legislation, coupled with the ability to delegate such authority to others to do so.

• A motion to adopt the CSP recommendation regarding the statute of repose was made by Ms. Teahan, with support from Mr. Ballard, and approved on a Council vote of 21-0 in favor of the motion, with no abstentions (this represents a PUBLIC POLICY POSITION and will be reported to the SBM as such).

• Reviewed the Dignified Death Act & Family Consent Law and noted the following:
  o Constance L. Brigman’s committee is authorized to monitor and report when developments occur
  o Further discussion and agenda placement tabled until such report

VII. **Standing Committee Reports**

A. **Internal Governance**

1. **Budget**

   Shaheen I. Imami presented the proposed budget for FY 2012-2013 (which was previously distributed with the Agenda for the meeting). Mr. Imami discussed line-item changes to combine electronic communications expenses into a single category and increases to certain budgeted items to reflect increased expenses. Mr. Imami also proposed the creation of a separate fund for amicus briefs to be seeded with $25,000.00 from the general fund and into which unspent amounts for the amicus brief budget line-item would be swept at the end of each fiscal year. The purpose of the amicus fund is to buffer the Section’s finances from a sudden increase in amicus activity – which is anticipated as more cases involving the interpretation and application of the Michigan Trust Code move their way through the appellate courts. Mr. Imami moved for approval of the proposed budget, with support from Amy N. Morrissey. The proposed budget was approved, with none opposed.

2. **Bylaws**

   Nancy H. Welber requested that the Council: (a) consider permitting outside groups to be consulting members of Section; and (b) revisit the issue of remote-participation in meetings by Section members.

3. **Awards**

   No report.

4. **Planning – Thomas F. Sweeney**

   Thomas F. Sweeney reported nothing further on the operational plan that was not already discussed during the meeting for the Committee on Special Projects.
5. Nominating

No report.

6. Annual Meeting – Thomas F. Sweeney

Thomas F. Sweeney reported that the annual meeting is scheduled for September 21, 2013.

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

David L. Skidmore reported on the invitation from the Michigan Supreme Court for the Section to provide an amicus brief in *Grange Ins Co of MI v Lawrence*, COA 145206. Mr. Skidmore opined that the case did not involve issues related to the Section and was primarily a no-fault benefit issue. Mr. Skidmore recommended declining the invitation. Patricia M. Oullette noted that the Family Law Section also declined. Mr. Skidmore moved to decline the invitation, with support by Judge David M. Murkowski, and approved on a Council vote of 20-0 in favor of the motion, with J. David Kerr abstaining (this represents a PUBLIC POLICY POSITION and will be reported to the SBM as such).

Mr. Skidmore queried whether the Section wants to monitor and offensively pursue amicus activity. George W. Gregory pointed out that many cases do not actually go anywhere. Mark K. Harder authorized Mr. Skidmore to monitor areas of potential amicus activity for the Section if Mr. Skidmore wanted to do so.

2. Probate Institute – Amy N. Morrissey

Amy N. Morrissey reported that no sponsors are confirmed yet, but she is continuing to work on content and will report more next month. Ms. Morrissey also reported that registration will open earlier than before.

3. State Bar and Section Journals – Amy N. Morrissey

Nancy Little reported that an e-blast was sent to members to determine those who want hard-copies of the Journal. Ms. Little described process of how it is determined who will get hard copies and how to change one’s preference.

Ms. Little also reported that the next issue of the Journal is on target, with space for tax issues being reserved in the event Congress makes any changes that affect the pending expiration of the current system.

Amy N. Morrissey reported that the topic issue in SBM Bar Journal has been pushed to 2014.

4. Citizens Outreach – Rebecca A. Schnelz
Rebecca A. Schnelz asked whether anyone actually orders from the SBM, rather than self-printing. She also discussed self-help site and requests for enhancements.

5. Electronic Communications – William J. Ard

No report, but William J. Ard elicited questions.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

Christopher A. Ballard briefly discussed SB 1296 and then deferred to Rebecca Bechler regarding matters currently pending in the Legislature. Ms. Bechler reported the status of various items on her memorandum and stated that much may change the landscape of scheduling in the Senate Judiciary depending on results of various ballot proposals.

2. Updating Michigan Law – Marguerite Munson Lentz

Marguerite Munson Lentz reported the status of proposed domestic protection asset trust legislation.

3. Insurance Committee – Thomas F. Sweeney

Thomas F. Sweeney reported that the insurable interest legislation passed the Michigan Senate and that other insurance-related initiatives remained on hold in the Legislature.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

J. David Kerr reported that the inventory attorney issue will be raised at November 2012 CSP meeting and that anyone with issues should send them to him before then.

John Scott reported on the Financial Action Task Force (FATF) that addresses the potential federalization of certain legal ethics intended to address money laundering and anti-terrorist financing. Mr. Scott stated that FATF may relate to or affect attorneys who draft trusts and business entities that may be viewed as devices to hide money; and that it may require objective verification of identity of individual seeking a service. ACTEC and the ABA are working together to create voluntary guidelines that may be adopted to avoid imposition of rules by U.S. Treasury.

2. Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor

No report.

3. Specialization and Certification – James B. Steward
No report.

E. Administration of Justice
   1. Court Rules, Procedures and Forms
      No report.
   2. Fiduciary Exception to Attorney Client Privilege
      George F. Bearup reported that the committee has met and is trying to ascertain the status
      of Michigan law on the issue, as well as surveying other states’ laws.

F. Areas of Practice
   1. Real Estate – George F. Bearup
      No report.
   2. Transfer Tax Committee
      Nancy H. Welber deferred to Thomas F. Sweeney, who reported the status of efforts to
      repeal Michigan’s inheritance tax. Mr. Sweeney does not think it is worth the Section’s time to
      address the issue. He reported that the banks are apparently concerned with old trusts that
      discuss the tax and the related costs of administration.

      James Spica discussed issues of allocating cost of living adjustments to GST prior to
      year-end for years after 2012, including some discussion of claw-backs, allocation, and
      contingency planning in drafting. Mr. Spica noted that the use of the allocated exemption in later
      years will depend on manner in which the sunset provision is interpreted and applied.

   3. Charitable and Exempt Organization – Christopher A. Ballard
      Christopher A. Ballard reported that the committee has identified the following, possible
      legislative proposals: supervision of trustees; authorizing charities to serve as trustees of trusts in
      which the charity is a beneficiary; some states have raised ethics opinions involving attorneys
      and conflicts of interests where drafting attorney sits on board of the charity-beneficiary.

   4. Guardianship, Conservatorship, and End of Life Committee
      Constance L. Brigman reported that the committee will look at the following:
      - Whether a GAL represents the alleged ward or not?
      - How GALs are appointed – should they be attorneys or someone with a specific skill set
        (like social workers)?
      - Language of orders appointing guardians: does the order need to more fully explain
        “full” or “plenary” guardianship?
G. Liaisons

1. Alternative Dispute Resolution Section Liaison

No report.

2. Business Law Section Liaison – John R. Dresser

Mark K. Harder reported for John R. Dresser about the establishment of business court in the circuit courts with three or more judges. Judge David M. Murkowski indicated that Judge Chris Yates would be willing to speak on the issue to those interested.

3. Elder Law Section Liaison

No report.

4. Family Law Section Liaison

Patricia M. Oullette reported that the Family Law Section’s coordination on proposed statute of repose.

5. ICLE Liaison

Jeanne Murphy discussed briefly the ICLE Community initiative.

6. Law Schools Liaison

No report.

7. Michigan Bankers Association Liaison

Susan M. Allen was absent, but George W. Gregory reported that Chase Bank will not accept a DPOA unless it has two witnesses, neither of which may be the notary. Nancy Little said that she discussed issue with Chase Bank and apparently its legal department will inform its employees of the conflict between its position and Michigan law.

Mr. Gregory also reported that the Wayne County Register of Deeds says that notary affidavit needs to reflect title and authority of the individual signing deed.


Judge David M. Murkowski had no report, but asked that the MPJA be kept in the loop regarding proposed changes to GAL responsibilities and other issues.

9. Probate Registers Liaison

No report.
10. **SCAO Liaisons**

Marlaine C. Teahan reported that workgroups have met, but there is no report yet.

11. **Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz**

No report.

12. **State Bar Liaison – David R. Brake**

No contact from liaison. No report.

13. **Taxation Section Liaison – Frederick H. Hoops, III**

No report.

**VIII. Other Business**

None.

**IX. Hot Topics**

None.

**X. Adjournment**

Meeting adjourned at 11:55 a.m.
Memorandum

To:       Probate and Estate Planning Section
From:      Rebecca Bechler
            Public Affairs Associates, Inc.
Date:      Saturday, October 27, 2012
Re:        Fall Legislative Update

The Legislature has only thirteen session days scheduled between now and the end of the year. Depending on the election results and the ballot initiative outcomes, session could have either a very hectic or very light schedule.

There are a number of issues the Section is monitoring during the final two months of session. Below is a status of those issues. (Any issues that are not completed before the end of the year will need to be re-introduced next session.)

Those issues likely to be completed by the end of the year:

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Title</th>
<th>Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 92 (Bieda)</td>
<td>Written acknowledgment</td>
<td></td>
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<tr>
<td>HB 5154 (Walsh)</td>
<td>Uniform Principal &amp; Income Act</td>
<td>PA 141 of 2012</td>
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<tr>
<td>HB 5237 (Ouimet)</td>
<td>Federal Estate Tax</td>
<td>PA 302, 2012</td>
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<tr>
<td>SB 1102-1103 (Schuitmaker)</td>
<td>(ins. Interests)</td>
<td>PA 303, 2012</td>
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<tr>
<td>SB 589 (Schuitmaker)</td>
<td>Foreign Guardianship (Schuitmaker)</td>
<td>House Insurance</td>
</tr>
<tr>
<td>SB 192 (Caswell)</td>
<td>Estate Admin Fee (deduct mtg/inv.)</td>
<td>House Judiciary</td>
</tr>
<tr>
<td>SB 978-980 (Jones, Schuitmaker)</td>
<td>(trust decanting/poa)</td>
<td>House Judiciary</td>
</tr>
<tr>
<td>SB 1296 (Schuitmaker)</td>
<td>Statute of Repose (Schuitmaker)</td>
<td>House Judiciary</td>
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Issues unlikely to be completed by the end of the year:

<table>
<thead>
<tr>
<th>Bill Number</th>
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</tr>
</thead>
<tbody>
<tr>
<td>SB 907 (Brandenburg)</td>
<td>Principal Residence Exemption (exemption for trust-owned property)</td>
<td>House Tax Policy</td>
</tr>
<tr>
<td>SB 404,405, 406</td>
<td>Estate Recovery</td>
<td>Senate Approps</td>
</tr>
<tr>
<td>Guardian Consent for DNR Orders (Cotter)</td>
<td></td>
<td>2013 issue</td>
</tr>
<tr>
<td>HB 5427 (Constan)</td>
<td>(property exempt from garnishmt)</td>
<td>House Judiciary</td>
</tr>
<tr>
<td>SB 1338 (Hildenbrand)</td>
<td>(allow probate judges to schedule certain hearings prior to minor turning 18)</td>
<td>Senate Judiciary</td>
</tr>
</tbody>
</table>
Senate Bill 1296 (2012)

Sponsor
Tonya Schuitmaker

Categories  Civil procedure, statute of limitations; Torts, nonmedical malpractice; Occupations, attorneys

Civil procedure; statute of limitations; statute of repose for actions against an attorney-at-law or a law firm; enact. Amends sec. 5838 of 1961 PA 236 (MCL 600.5838) & adds sec. 5838b.

Bill Document Formatting Information
[X]
The following bill formatting applies to the 2011-2012 session:
- New language in an amendatory bill will be shown in BOLD AND UPPERCASE.
- Language to be removed will be strucken.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

(gray icons indicate that the action did not occur or that the document is not available)

Documents

Senate Introduced Bill
Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.

As Passed by the Senate
As Passed by the Senate is the bill, as introduced, that includes any adopted Senate amendments.

As Passed by the House
As Passed by the House is the bill, as received from the Senate, that includes any adopted House amendments.

Senate Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Senate Fiscal Analysis

COMMITTEE SUMMARY (Date Completed: 9-24-12)
This document analyzes: SB1296

FLOOR SUMMARY (Date Completed: 9-28-12)
This document analyzes: SB1296

History

<table>
<thead>
<tr>
<th>Date</th>
<th>Journal</th>
<th>Action</th>
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<tbody>
<tr>
<td>9/20/2012</td>
<td>SJ 67</td>
<td>Pg. 2062 REFERRED TO COMMITTEE ON JUDICIARY</td>
</tr>
<tr>
<td>9/27/2012</td>
<td>SJ 69</td>
<td>Pg. 2140 REPORTED FAVORABLY WITHOUT AMENDMENT</td>
</tr>
<tr>
<td>9/27/2012</td>
<td>SJ 69</td>
<td>Pg. 2140 COMMITTEE RECOMMENDED IMMEDIATE EFFECT</td>
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<tr>
<td>9/27/2012</td>
<td>SJ 69</td>
<td>Pg. 2140 REFERRED TO COMMITTEE OF THE WHOLE</td>
</tr>
<tr>
<td>10/17/2012</td>
<td>SJ 70</td>
<td>Pg. 2162 REPORTED BY COMMITTEE OF THE WHOLE FAVORABLY</td>
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</tbody>
</table>
WITHOUT AMENDMENT(S)
10/17/2012 SJ 70 Pg. 2162 PLACED ON ORDER OF THIRD READING
10/17/2012 SJ 70 Pg. 2168 RULES SUSPENDED
10/17/2012 SJ 70 Pg. 2168 PLACED ON IMMEDIATE PASSAGE
10/17/2012 SJ 70 Pg. 2183 PASSED ROLL CALL # 712 YEAS 37 NAYS 0 Excused 1 NOT VOTING 0
11/8/2012 Expected in HJ 73 received on 10/17/2012

The Michigan Legislature Website is a free service of the Legislative Internet Technology Team in cooperation with the Michigan Legislative Council, the Michigan House of Representatives, and the Michigan Senate. The information obtained from this site is not intended to replace official versions of that information and is subject to revision. The Legislature presents this information, without warranties, express or implied, regarding the accuracy of the information, timeliness, or completeness. If you believe the information is inaccurate, out-of-date, or incomplete or if you have problems accessing or reading the information, please send your concerns to the appropriate agency using the online Comment Form in the bar above this text.
A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961,",
by amending section 5838 (MCL 600.5838), as amended by 1986 PA 178,
and by adding section 5838b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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. shall be on the plaintiff. A malpractice action which 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, LICENSED IN THIS STATE OR ELSEWHERE, OR A LAW FIRM SHALL NOT BE COMMENCED LATER THAN 6 YEARS AFTER THE DATE OF THE ACT OR OMISSION THAT IS THE BASIS FOR THE CLAIM.

(2) AS USED IN THIS SECTION, "LAW FIRM" MEANS EITHER OF THE FOLLOWING:

(A) AN ORGANIZATION THAT IS ENGAGED IN THE PRIVATE PRACTICE OF LAW, INCLUDING A PARTNERSHIP, SOLE PRACTITIONER WITH 1 OR MORE HIRED ASSOCIATES, PROFESSIONAL LIMITED LIABILITY PARTNERSHIP, PROFESSIONAL LIMITED LIABILITY COMPANY, OR PROFESSIONAL CORPORATION.

(B) A LEGAL SERVICES ORGANIZATION.
Senate Bill 1296 (as introduced 9-20-12)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 9-24-12

CONTENT

The bill would add Section 5838b to the Revised Judicature Act to provide that an action for legal malpractice against an attorney-at-law, licensed in Michigan or elsewhere, or a law firm could not be commenced later than six years after the date of the act or omission that was the basis for the claim.

The Act provides that a person may not bring an action to recover damages unless, after the claim first accrued to the person, the action is commenced within the period of time prescribed by the Act (the statute or period of limitations). As a rule, the statute of limitations on malpractice actions is two years.

Except as otherwise provided in Section 5838a (which applies to medical malpractice actions), if a claim is based on the malpractice of a person who is a member of a State licensed profession, the claim accrues at the time the person discontinues serving the plaintiff in a professional capacity as to the matters that were the basis for the malpractice action, regardless of when the plaintiff discovers or otherwise has knowledge of the claim.

In addition, except as otherwise provided in Section 5838a, a malpractice action may be commenced at any time within the applicable period of limitations, or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later.

Under the bill, these provisions would apply except as otherwise provided in Section 5838a or proposed Section 5838b.

The bill would define "law firm" as either an organization that is engaged in the private practice of law, including a partnership, sole practitioner with one or more hired associates, professional limited liability partnership, professional limited liability company, or professional corporation; or a legal services corporation.

MCL 600.5838 et al. Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor
Senate Bill 77 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Judiciary
House Committee: Judiciary
Date Completed: 1-20-12

RATIONALE

A 2006 decision of the Michigan Supreme Court raised concerns about the length of time a person would have to bring a lawsuit against an architect, professional engineer, or contractor. In Ostroth v Warren Regency, GP, LLC, the Court addressed the interaction of Sections 5805 and 5839 of the Revised Judicature Act which, respectively, impose a statute of limitations and a statute of repose (also called a period of limitations and a period of repose). (A statute of limitations limits the period of time an action may be brought after an injury or damage occurs or is discovered. A statute of repose sets a fixed time following an event, other than the occurrence of the injury or damage, after which a person cannot be held liable for injury or damage. When the period of repose expires, an action may not be brought even if the injury or damage has not yet occurred.) Traditionally, lawsuits against architects and engineers were subject to the two-year statute of limitations on malpractice actions under Section 5805, and suits against contractors were subject to the section's three-year statute of limitations on general negligence actions. As amended in 1988, however, Section 5805 specified that the period of limitations for an action against an architect, professional engineer, or contractor, based on an improvement to real property, was as provided in Section 5839. Under that section, as a rule, a person may not bring an action arising out of the defective and unsafe condition of an improvement to real property, against an architect, professional engineer, or contractor later than six years after the time of occupancy or acceptance of the completed improvement.

In Ostroth, the Supreme Court held that Section 5839 functioned as both a statute of limitations and a statute of repose. As a result, injured parties had six years after the completion of an improvement to real property to bring an action against an architect, professional engineer, or contractor, regardless of whether the two- or three-year period of limitations under Section 5805 otherwise would have barred the action. Some people believed that this holding contradicted the public policy against preventing scale claims and created confusion and instability in the legal environment for the design and construction industry. It was suggested, therefore, that the Ostroth decision be reversed in statute.

CONTENT

The bill amended Sections 5805 and 5839 of the Revised Judicature Act to make actions against architects, professional engineers, and professional surveyors subject to the two-year statute of limitations on malpractice actions; and remove language under which Section 5839 governed the period of limitations on actions against those professionals and contractors.

Specifically, under the bill, an action against a State-licensed architect or professional engineer or a licensed professional surveyor arising from professional services rendered is an action charging malpractice subject to the period of limitation contained in Section 5805(6) (the two-year period of limitation on malpractice actions).
The bill specifies that the periods of limitation under Section 5805 are subject to the applicable period of repose established in Section 5839.

The bill deleted the language under which the period of limitation for an action against a State licensed architect, professional engineer, land surveyor, or contractor based on an improvement to real property was as provided in Section 5839.

Under Section 5839, a person may not bring an action arising out of the defective and unsafe condition of an improvement to real property, against an architect, professional engineer, or contractor later than six years after the time of occupancy or acceptance of the completed improvement. If the defect constitutes the proximate cause of the injury or damage and is the result of gross negligence, the action must be brought within one year after the defect is or should have been discovered, but may not be brought more than 10 years after the time of occupancy, use, or acceptance. An action based on error or negligence of a land surveyor in the preparation of a survey or report may not be maintained more than six years after delivery of the survey or report.

The bill retains these provisions. For an action against a professional surveyor, the period of repose is six years after a survey or report is delivered or recorded.

The bill took effect on January 1, 2012, and the amendments to Sections 5805 and 5839 apply to causes of action accruing on or after that date.

MCL 600.5805 & 600.5839

BACKGROUND

Section 5839 of the Revised Judicature Act (RJA) originally was enacted in 1967 to limit the liability exposure of architects and engineers. Michigan courts had held that architects, like health professionals, were subject to the statute of limitations that governs malpractice actions; by extension, this also applied to engineers. Until the mid-20th century, a person had to be "in privity" with an architect or engineer in order to bring a claim against him or her (meaning, essentially, that the parties had to have a contractual relationship). This doctrine began to wane as a defense in suits by injured third parties, which expanded the scope of liability of architects and engineers. As a result, Public Act 203 of 1967 added Section 5839 to the RJA to establish a six-year period of repose for these actions. Subsequently, Public Act 188 of 1985 extended this to contractors.

The courts then dealt with the question of whether Section 5839 applied to all claims arising out of the defective and unsafe condition of an improvement to real property, or only to third-party claims. Separate panels of the Michigan Court of Appeals held that the section did not apply to the owner of the property, but also found that lawsuits by owners were subject to the six-year statute of limitations on contract actions. These opinions distinguished between damage suffered by third parties arising out of an improvement to real property and damage to the improvement itself. In response to these decisions, Public Act 115 of 1988 amended Section 5805, adding the language under which the period of limitations for an action against an architect, engineer, or contractor based on an improvement to real property was as provided in Section 5839. In a 1992 opinion, the Michigan Court of Appeals held that the intent behind this amendment was to apply the limitation in Section 5839 "...to all actions brought against contractors on the basis of an improvement to real property, including those by owners for damage to the improvement itself" (Michigan Millers Mutual Insurance Co. v West Detroit Building Co., Inc., 196 Mich App 367).

The interaction between Sections 5805 and 5839 was addressed by the Michigan Court of Appeals in January 1994 in Witherspoon v Guilford (203 Mich App 240). This case involved an action that was brought after the three-year period of limitations for negligence claims in Section 5805 had run, but within the six-year period set forth in Section 5839. Reading the statute as a whole, the Court stated, "[W]e do not understand those provisions to expand the general three-year period of viability for injury claims under...[Section 5805] to a six-year period insofar as the claims are protected by § 5839." According to the Court, the Legislature did not indicate an intention "to breathe additional life into claims that otherwise would have expired" under Section 5805. In other words, the
600.5801 Limitation on actions; time periods; defendant claiming title under deed, court-ordered sale, tax deed, or will; other cases.

Sec. 5801. No person may bring or maintain any action for the recovery or possession of any lands or make any entry upon any lands unless, after the claim or right to make the entry first accrued to himself or to someone through whom he claims, he commences the action or makes the entry within the periods of time prescribed by this section.

(1) When the defendant claims title to the land in question by or through some deed made upon the sale of the premises by an executor, administrator, guardian, or testamentary trustee; or by a sheriff or other proper ministerial officer under the order, judgment, process, or decree of a court or legal tribunal of competent jurisdiction within this state, or by a sheriff upon a mortgage foreclosure sale the period of limitation is 5 years.

(2) When the defendant claims title under some deed made by an officer of this state or of the United States who is authorized to make deeds upon the sale of lands for taxes assessed and levied within this state the period of limitation is 10 years.

(3) When the defendant claims title through a devise in any will, the period of limitation is 15 years after the probate of the will in this state.

(4) In all other cases under this section, the period of limitation is 15 years.


600.5803 Foreclosure of mortgages.

Sec. 5803. No person shall bring or maintain any action or proceeding to foreclose a mortgage on real estate unless he commences the action or proceeding within 15 years after the mortgage becomes due or within 15 years after the last payment was made on the mortgage. This section limits foreclosure by advertisement and any other entries under the mortgage as well as actions of foreclosure in the courts.


600.5805 Injuries to persons or property; period of limitations; “dating relationship” defined.

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 the applicable period of repose established in section 5839.

(16) The amendments to this section made by the 2011 amendatory act that added this subsection apply to causes of action that accrue on or after the effective date of that amendatory act.

(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.


Compiler's note: Section 3 of Act 178 of 1986 provides:

“(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

“(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

“(4) Sections 1561 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

“(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."

600.5807 Damages for breaches of contract; specific performance; fiduciary bonds; deeds; mortgages; surety bonds; appeal bonds; public obligations.

Sec. 5807. No person may bring or maintain any action to recover damages or sums due for breach of contract, or to enforce the specific performance of any contract unless, after the claim first accrued to himself or to someone through whom he claims, he commences the action within the periods of time prescribed by this section.

(1) The period of limitations on actions charging any surety on any bond of any executor, administrator, guardian is 4 years after the discharge of the executor, administrator, or guardian.

(2) The period of limitations is 10 years for actions founded upon bonds of public officers.

(3) The period of limitations on actions founded upon bonds executed under sections 41.80 and 41.81 of the Compiled Laws of 1948, is 2 years after the expiration of the year for which the constable was elected.

(4) The period of limitations is 10 years for actions founded upon covenants in deeds and mortgages of real estate.

(5) The period of limitations is 2 years for actions charging any surety for costs.

(6) The period of limitations is 2 years for actions brought on bonds or recognizances given on appeal from any court in this state.

(7) The period of limitations is 10 years for actions on bonds, notes, or other like instruments which are the direct or indirect obligation of, or were issued by although not the obligation of, the state of Michigan or any county, city, village, township, school district, special assessment district, or other public or quasi-public corporation in the state of Michigan.

(8) The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract.


600.5809 Action to enforce noncontractual money obligations; limitations.

Sec. 5809. (1) A person shall not bring or maintain an action to enforce a noncontractual money obligation
unless, after the claim first accrued to the person or to someone through whom he or she claims, the person commences the action within the applicable period of time prescribed by this section.

(2) The period of limitations is 2 years for an action for the recovery of a penalty or forfeiture based on a penal statute brought in the name of the people of this state.

(3) Except as provided in subsection (4), the period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record of this state, or in a court of record of the United States or of another state of the United States, from the time of the rendition of the judgment or decree. The period of limitations is 6 years for an action founded upon a judgment or decree rendered in a court not of record of this state, or of another state, from the time of the rendition of the judgment or decree. A judgment entered in the district court of this state before May 25, 1973, is a judgment of a court not of record. A judgment entered in the district court of this state on or after May 25, 1973, except a judgment entered in the small claims division of the district court, is a judgment of a court of record. Within the applicable period of limitations prescribed by this subsection, an action may be brought upon the judgment or decree for a new judgment or decree. The new judgment or decree is subject to this subsection.

(4) For an action to enforce a support order that is enforceable under the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, the period of limitations is 10 years from the date that the last support payment is due under the support order regardless of whether or not the last payment is made.


600.5811 Common carriers; charges and overcharges; definitions.

Sec. 5811. (1) All actions by common carriers for the recovery of all or any part of their charges arising out of the intrastate transportation of persons or property within the state of Michigan, and all actions against carriers for the recovery of overcharges collected by common carriers for the intrastate transportation of persons or property within the state of Michigan shall be begun within 2 years of the time the claim accrues and not afterwards.

(2) The term “charges” as used in this section means the charges applicable for transportation services under the tariffs lawfully on file with the Michigan public service commission; and the term “overcharge” as used in this section means charges for transportation services in excess of the tariffs lawfully on file with the Michigan public service commission.


600.5813 Other personal actions.

Sec. 5813. All other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes.


600.5815 Scope of limitations; legal and equitable; laches.

Sec. 5815. The prescribed period of limitations shall apply equally to all actions whether equitable or legal relief is sought. The equitable doctrine of laches shall also apply in actions where equitable relief is sought.


600.5821 Recovery of land; recovery of public ground; personal actions; maintenance, care, and treatment of persons in state institutions.

Sec. 5821. (1) Actions for the recovery of any land where the state is a party are not subject to the periods of limitations, or laches. However, a person who could have asserted claim to title by adverse possession for more than 15 years is entitled to seek any other equitable relief in an action to determine title to the land.

(2) Actions brought by any municipal corporations for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the periods of limitations.

(3) The periods of limitations prescribed for personal actions apply equally to personal actions brought in the name of the people of this state, or in the name of any officer, or otherwise for the benefit of this state, subject to the exceptions contained in subsection (4).

(4) Actions brought in the name of the state of Michigan, the people of the state of Michigan, or any political subdivision of the state of Michigan, or in the name of any officer or otherwise for the benefit of the state of Michigan or any political subdivision of the state of Michigan for the recovery of the cost of maintenance, care, and treatment of persons in hospitals, homes, schools, and other state institutions are not subject to the statute of limitations and may be brought at any time without limitation, the provisions of any
statute notwithstanding.


600.5823 Counterclaims.

Sec. 5823. To the extent of the amount established as plaintiff's claim the periods of limitations prescribed in this chapter do not bar a claim made by way of counterclaim unless the counterclaim was barred at the time the plaintiff's claim accrued.


600.5825 Effect of limits running in favor of some joint obligors but not all.

Sec. 5825. (1) In actions commenced against 2 or more joint obligors, or joint executors or administrators of any contractor, if it is shown that the plaintiff's action is barred by the period of limitations as to 1 or more of the defendants but that the plaintiff is entitled to recover against any of the other defendants because of a new acknowledgment, or promise, or for any other reason, then judgment shall be given in favor of the plaintiff against those defendants from whom he is otherwise entitled to recover and against the plaintiff as to those defendants in whose favor the period of limitations has run.

(2) If there are 2 or more joint obligors or joint executors or joint administrators of any obligor, no one of them shall lose the benefit of the provisions of this chapter so as to be chargeable because of any acknowledgment or promise made or signed by any of the others.

(3) If there are 2 or more joint obligors, or joint executors or joint administrators of any obligor, no one of them shall lose the benefit of the provisions of this chapter so as to be chargeable merely because of any payment made by any of the others.


600.5827 Accrual of claim.

Sec. 5827. Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838, and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.


600.5829 Accrual of claim; right of entry or recovery of possession of land.

Sec. 5829. The right to make an entry on, and the claim to recover land accrue:

(1) Whenever any person is disseised, his right of entry on and claim to recover land accrue at the time of his disseisin;

(2) When he claims as heir or devisee of one who died seised, his claim accrues at the time of the death, unless there is another estate intervening after the death of the ancestor or deviser in which case his claim accrues when the intermediate estate expires or would have expired by its own limitation;

(3) When there is an intermediate estate, and in all other cases where the party claims by force of any remainder or reversion, his claim accrues when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture of the intermediate or precedent estate for which he might have entered at an earlier time.

(4) The provision of (3), does not prevent any person from entering when he is entitled to do so by any forfeiture or breach of condition, but if he claims under either of them his claim accrues when the forfeiture is incurred or the condition broken.

(5) In all cases not otherwise provided for, the claim accrues when the claimant or the person under whom he claims first becomes entitled to the possession of the premises under the title upon which the entry or action is founded.


600.5831 Accrual of claim; mutual and open account current.

Sec. 5831. In actions brought to recover the balance due upon a mutual and open account current, the claim accrues at the time of the last item proved in the account.


600.5833 Accrual of claim; breach of warranty of quality or fitness.

Sec. 5833. In actions for damages based on breach of a warranty of quality or fitness the claim accrues at the time the breach of the warranty is discovered or reasonably should be discovered.

600.5834 Accrual of claim; common carriers; charges; overcharges.  
Sec. 5834. In actions brought by common carriers to recover for charges arising out of intrastate transportation and in actions brought against common carriers to recover for overcharges arising out of intrastate transportation the claim in respect to each shipment of property accrues upon the delivery or tender of the shipment of property and not afterwards.  

600.5835 Accrual of claim; life insurance; presumption of death.  
Sec. 5835. In actions on life insurance contracts where the claim is based on the 7-year presumption of death, the claim accrues at the end of the 7 years, for the purpose of computing the running of the period of limitations.  

600.5836 Accrual of claim; installment contracts.  
Sec. 5836. The claims on an installment contract accrue as each installment falls due.  

600.5837 Accrual of claim; alimony.  
Sec. 5837. The claims for alimony payments accrue as each payment falls due.  

600.5838 Claim based on malpractice; accrual; commencement of action; burden of proof; limitations.  
Sec. 5838. (1) Except as otherwise provided in section 5838a, 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, 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 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 shall be on the plaintiff. A malpractice action which is not commenced within the time prescribed by this subsection is barred.  
Compiler's note: Section 3 of Act 178 of 1986 provides:  
"(1) Sections 2925h, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.  
(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.  
(3) Sections 1629, 1653, 2169, 2391, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6339, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.  
(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.  
(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.  
(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."

600.5838a Claim based on medical malpractice; accrual; definitions; commencement of action; burden of proof; applicability of subsection (2); limitations.  
Sec. 5838a. (1) For purposes of this act, a claim based on the medical malpractice of a person or entity who is or who holds himself or herself out to be a licensed health care professional, licensed health facility or agency, or an employee or agent of a licensed health facility or agency who is engaging in or otherwise assisting in medical care and treatment, whether or not the licensed health care professional, licensed health facility or agency, or their employee or agent is engaged in the practice of the health profession in a sole proprietorship, partnership, professional corporation, or other business entity, accrues at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or
otherwise has knowledge of the claim. As used in this subsection:

(a) "Licensed health facility or agency" means a health facility or agency licensed under article 17 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20101 to 333.22260 of the Michigan Compiled Laws.

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

(2) Except as otherwise provided in this subsection, an action involving a claim based on medical malpractice may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. However, except as otherwise provided in section 5851(7) or (8), the claim shall not be commenced later than 6 years after the date of the act or omission that is the basis for the claim. The burden of proving that the plaintiff, as a result of physical discomfort, appearance, condition, or otherwise, 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 is on the plaintiff. A medical malpractice action that is not commenced within the time prescribed by this subsection is barred. This subsection does not apply, and the plaintiff is subject to the period of limitations set forth in subsection (3), under 1 of the following circumstances:

(a) If discovery of the existence of the claim was prevented by the fraudulent conduct of the health care professional against whom the claim is made or a named employee or agent of the health professional against whom the claim is made, or of the health facility against whom the claim is made or a named employee or agent of a health facility against whom the claim is made.

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

(3) An action involving a claim based on medical malpractice under circumstances described in subsection (2)(a) or (b) may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The burden of proving that the plaintiff, as a result of physical discomfort, appearance, condition, or otherwise, 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 is on the plaintiff. A medical malpractice action that is not commenced within the time prescribed by this subsection is barred.


Compiler's note: Section 3 of Act 178 of 1986 provides:
(1) Sections 2925, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amending act, shall not apply to causes of action arising before October 1, 1986.
(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amending act, shall apply to causes of action arising on or after October 1, 1986.
(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amending act, shall apply to cases filed on or after October 1, 1986.
(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amending act, shall not apply to cases filed before October 1, 1986.
(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amending act, shall apply to cases filed on or after January 1, 1987.
(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amending act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.

600.5839 Period of limitations on actions against licensed architect, professional engineer, contractor, or licensed professional surveyor; definitions; applicability.

Sec. 5839. (1) A person shall not maintain an action to recover damages for injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective or unsafe condition of an improvement to real property, or an action for contribution or indemnity for damages sustained as a result of such injury, against any state licensed architect or professional engineer performing or furnishing the design or supervision of construction of the improvement, or against any contractor making the improvement, unless the action is commenced within either of the following periods:

(a) Six years after the time of occupancy of the completed improvement, use, or acceptance of the improvement.

(b) If the defect constitutes the proximate cause of the injury or damage for which the action is brought and
is the result of gross negligence on the part of the contractor or licensed architect or professional engineer, 1 year after the defect is discovered or should have been discovered. However, an action to which this subdivision applies shall not be maintained more than 10 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement.

(2) A person shall not maintain an action to recover damages based on error or negligence of a licensed professional surveyor in the preparation of a survey or report more than 6 years after the survey or report is recorded or is delivered to the person for whom it was made or the person's agent.

(3) As used in this section:
(a) "Contractor" means an individual, corporation, partnership, or other business entity that makes an improvement to real property.
(b) "State licensed architect or professional engineer" or "licensed professional surveyor" means an individual so licensed, or a corporation, partnership, or other business entity on behalf of whom the state licensed architect or professional engineer or licensed professional surveyor is performing or directing the performance of the architectural, professional engineering, or land surveying service.

(4) The amendments to this section made by the 2011 amending act that added this subsection apply to causes of action that accrue on or after the effective date of that amending act.


Constitutionality: In O'Brien v Hazelt & Erdal, 410 Mich 1; 299 NW2d 336 (1980), the Michigan supreme court held that this statute does not violate constitutional precepts of due process and equal protection.

600.5841 Accrual of claim; to person other than person bringing action.
Sec. 5841. If the claim first accrues to an ancestor, predecessor, or grantor of the person who brings the action or makes the entry, or to any other person from or under whom he claims, the periods of limitations shall be computed from the time when the claim first accrued to the ancestor, predecessor, grantor, or other person, except as otherwise provided by law.


600.5843 Accrual of claim; regaining possession of land; subsequent loss; effect.
Sec. 5843. If the person who has a right to make an entry on land or a claim for the possession of land regains possession of it before the period of limitations has run and then loses possession of the premises again, the subsequent loss shall be deemed to give rise to a new claim which has its own period of limitations.


600.5851 Disabilities of infancy or insanity; tacking of successive disabilities prohibited; year of grace; removing disability of infancy; claim alleging medical malpractice accruing to person 8 years old or less or 13 years old or less; disability of imprisonment; "release from imprisonment" defined.

Sec. 5851. (1) Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided for in section 5832.

(2) The term insane as employed in this chapter means a condition of mental derangement such as to prevent the sufferer from comprehending rights he or she is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane.

(3) To be considered a disability, the infancy or insanity must exist at the time the claim accrues. If the disability comes into existence after the claim has accrued, a court shall not recognize the disability under this section for the purpose of modifying the period of limitations.

(4) A person shall not tack successive disabilities. A court shall recognize only those disabilities that exist at the time the claim first accrues and that disable the person to whom the claim first accrues for the purpose of modifying the period of limitations.

(5) A court shall recognize both of the disabilities of infancy or insanity that disable the person to whom the claim first accrues at the time the claim first accrues. A court shall count the year of grace provided in this section from the termination of the last disability to the person to whom the claim originally accrued that has continued from the time the claim accrued, whether this disability terminates because of the death of the person disabled or for some other reason.

(6) With respect to a claim accruing before the effective date of the age of majority act of 1971, Act No. 79 of the Public Acts of 1971, being sections 722.51 to 722.55 of the Michigan Compiled Laws, the disability of
infancy is removed as of the effective date of Act No. 79 of the Public Acts of 1971, as to persons who were at least 18 years of age but less than 21 years of age on January 1, 1972, and is removed as of the eighteenth birthday of a person who was under 18 years of age on January 1, 1972.

(7) Except as otherwise provided in subsection (8), if, at the time a claim alleging medical malpractice accrues to a person under section 5838a the person has not reached his or her eighteenth birthday, a person shall not bring an action based on the claim unless the action is commenced on or before the person's tenth birthday or within the period of limitations set forth in section 5838a, whichever is later. If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has reached his or her eighteenth birthday, he or she is subject to the period of limitations set forth in section 5838a.

(8) If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has not reached his or her thirteenth birthday and if the claim involves an injury to the person's reproductive system, a person shall not bring an action based on the claim unless the action is commenced on or before the person's fifteenth birthday or within the period of limitations set forth in section 5838a, whichever is later. If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has reached his or her thirteenth birthday and the claim involves an injury to the person's reproductive system, he or she is subject to the period of limitations set forth in section 5838a.

(9) If a person was serving a term of imprisonment on the effective date of the 1993 amendatory act that added this subsection, and that person has a cause of action to which the disability of imprisonment would have been applicable under the former provisions of this section, an entry may be made or an action may be brought under this act for that cause of action within 1 year after the effective date of the 1993 amendatory act that added this subsection, or within any other applicable period of limitation provided by law.

(10) If a person died or was released from imprisonment at any time within the period of 1 year preceding the effective date of the 1993 amendatory act that added this subsection, and that person had a cause of action to which the disability of imprisonment would have been applicable under the former provisions of this section on the date of his or her death or release from imprisonment, an entry may be made or an action may be brought under this act for that cause of action within 1 year after the date of his or her death or release from imprisonment, or within any other applicable period of limitation provided by law.

(11) As used in this section, "release from imprisonment" means either of the following:
(a) A final release or discharge from imprisonment in a county jail.
(b) Release on parole or a final release or discharge from imprisonment in a state or federal correctional facility.


Compiler's note: Section 3 of Act 178 of 1986 provides:
"(1) Sections 2925h, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.
"(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.
"(3) Sections 1625, 1653, 2169, 2951, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.
"(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.
"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.
"(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."

600.5852 Death before period of limitations has run or within 30 days thereafter; commencement of action.

Sec. 5852. If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. But an action shall not be brought under this provision unless the personal representative commences it within 3 years after the period of limitations has run.


600.5853 Absence from state.

Sec. 5853. If any person is outside of this state at the time any claim accrues against him the period of limitation shall only begin to run when he enters this state unless a means of service of process sufficient to
vest the jurisdiction of a Michigan court over him was available to the plaintiff. If after any claim accrues the
person against whom the claim accrued is absent from this state, any and all periods of absence in excess of 2
months at a time shall not be counted as any part of the time limited for the commencement of the action
unless while he was outside of this state a means for service of process sufficient to vest the jurisdiction of a
Michigan court over him was available to the plaintiff.


600.5854 War; inability to prosecute; period of limitation.

Sec. 5854. If any person is unable to prosecute an action in the courts of this state because he is a citizen or
subject of any country at war with the United States or because he is detained in any country at war with the
United States or because he is detained by any neutral power or because for any other reason arising out of the
war he is unable to use the courts of this state, the time of the continuance of the war shall not be counted as a
part of the period limited for the commencement of any action.


600.5855 Fraudulent concealment of claim or identity of person liable; discovery.

Sec. 5855. If a person who is or may be liable for any claim fraudulently conceals the existence of the
claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue
on the claim, the action may be commenced at any time within 2 years after the person who is entitled to
bring the action discovers, or should have discovered, the existence of the claim or the identity of the person
who is liable for the claim, although the action would otherwise be barred by the period of limitations.


600.5856 Tolling of statute of limitations or repose.

Sec. 5856. The statutes of limitations or repose are tolled in any of the following circumstances:
(a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant
within the time set forth in the supreme court rules.
(b) At the time jurisdiction over the defendant is otherwise acquired.
(c) At the time notice is given in compliance with the applicable notice period under section 2912b, if
during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute
is tolled not longer than the number of days equal to the number of days remaining in the applicable notice
period after the date notice is given.


Compiler's note: Enacting section 1 of Act 87 of 2004 provides:
"(1) Except as provided in subsection (2), this amendatory act applies to civil actions filed on or after the effective
date of this amendatory act.
(2) This amendatory act does not apply to a cause of action if the statute of limitations or repose for that cause of action has expired before the effective date of this amendatory act."

600.5861 Cause of action accruing without state; limitation on commencement of action.

Sec. 5861. An action based upon a cause of action accruing without this state shall not be commenced after
the expiration of the statute of limitations of either this state or the place without this state where the cause of
action accrued, except that where the cause of action accrued in favor of a resident of this state the statute of
limitations of this state shall apply. This amendatory act shall be effective as to all actions hereinafter
commenced and all actions heretofore commenced now pending in the trial or appellate courts.


600.5865 Endorsement or memorandum of payment; evidence.

Sec. 5865. No endorsement or memorandum of any payment, written or placed upon any promissory note,
bill of exchange, or other writing, by or on behalf of the party to whom the payment was made or was
purported to have been made, shall be allowed as evidence of the payment for the purpose of barring the
running of the period of limitations. This section merely limits the evidence which may be allowed to be
given for the purpose of showing part payment which would bar the running of the period of limitations, and
is not to be deemed to have any control over the effect of part payment which is proved by other evidence.


600.5866 Revival of barred claim; written acknowledgment of obligor.

Sec. 5866. Express or implied contracts which have been barred by the running of the period of limitation
shall be revived by the acknowledgment or promise of the party to be charged. But no acknowledgment or
promise shall be recognized as effective to bar the running of the period of limitations or revive the claim unless the acknowledgment is made by or the promise is contained in some writing signed by the party to be charged by the action.


600.5867 Presumption as to possession of land; exception.
Sec. 5867. In every action for the recovery or possession of real estate, the person establishing the legal title to the premises is presumed to have been in possession of the premises within the time limited by law for bringing such action, unless it appears that the same has been possessed adversely to such legal title by the defendant or by those from or under whom he claims, or that the grantee, or his assigns, in a contract of purchase have been in possession claiming title by virtue of said contract of purchase for a period of 20 years after the last payment was due on said contract or after the last payment was made on said contract of purchase.


600.5868 Entry and possession.
Sec. 5868. No person shall be deemed to have been in possession of any lands, within the meaning of this chapter merely by reason of having made an entry thereon, unless he continues in open and peaceable possession of the premises for at least 1 year next after such entry, or unless an action is commenced upon such entry and seizin, within 1 year after he is ousted or dispossessed of the premises.


600.5869 Rights governed by law under which right accrued.
Sec. 5869. All actions and rights shall be governed and determined according to the law under which the right accrued, in respect to the limitations of such actions or right of entry.