

# HOUSE BILL No. 5821

April 22, 2004, Introduced by Reps. Ehardt, Mortimer, Brandenburg, Sak, Bieda and Vander Veen and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
 "Revised judicature act of 1961,"  
 by amending section 5851 (MCL 600.5851), as amended by 1993 PA  
 283.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 5851. (1) Except as otherwise provided in ~~subsections~~  
 2 ~~(7) and (8)~~ **subsection (2), (6), or (7)**, if the person first  
 3 entitled to make an entry or bring an action under this act is  
 4 ~~under~~ **less than** 18 years of age or insane at the time the claim  
 5 accrues, the person or those claiming under the person ~~shall~~  
 6 have 1 year after the disability is removed, through death or  
 7 otherwise, to make the entry or bring the action although the  
 8 period of limitations has run. This section does not ~~lessen~~  
 9 **shorten** the time ~~provided for in~~ **within which an action may be**  
 10 **commenced under** section 5852.

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

6       (2) If a claim that arises from sexual conduct with a person  
7 accrues when the person is less than 18 years of age, the person  
8 or a person entitled to bring an action based on the claim has 2  
9 years after the effective date of the amendatory act that added  
10 this subsection or 20 years after the disability is removed,  
11 whichever is later, to bring the action, regardless of whether  
12 the period of limitations has run.

13       (3) To be ~~considered~~ a disability **under this section**, the  
14 infancy or insanity must exist at the time the claim accrues. If  
15 the disability comes into existence after the claim ~~has accrued,~~  
16 a court shall not recognize the disability under this section for  
17 ~~the purpose of modifying~~ **accrues**, the period of limitations **is**  
18 **not modified by this section.**

19       (4) ~~A person shall not tack successive disabilities. A~~  
20 ~~court shall recognize only~~ **Successive disabilities may not be**  
21 **tacked. Only** those disabilities that exist at the time the claim  
22 first accrues and that disable the person to whom the claim first  
23 accrues ~~for the purpose of modifying~~ **modify** the period of  
24 limitations **under this section.**

25       (5) ~~A court shall recognize~~ **If** both of the disabilities of  
26 infancy ~~or~~ **and** insanity ~~that~~ disable the person to whom ~~the~~  
27 **a** claim first accrues at the time the claim first accrues, **both**

1 **disabilities apply under this section.** ~~A court shall count the~~  
2 ~~year~~ **A period** of grace provided in this section ~~from~~ **begins on**  
3 the termination of the last disability to the person to whom the  
4 claim originally accrued that has continued from the time the  
5 claim accrued, whether this disability terminates because of the  
6 death of the person disabled or for some other reason.

7 ~~(6) With respect to a claim accruing before the effective~~  
8 ~~date of the age of majority act of 1971, Act No. 79 of the Public~~  
9 ~~Acts of 1971, being sections 722.51 to 722.55 of the Michigan~~  
10 ~~Compiled Laws, the disability of infancy is removed as of the~~  
11 ~~effective date of Act No. 79 of the Public Acts of 1971, as to~~  
12 ~~persons who were at least 18 years of age but less than 21 years~~  
13 ~~of age on January 1, 1972, and is removed as of the eighteenth~~  
14 ~~birthday of a person who was under 18 years of age on January 1,~~  
15 ~~1972.~~

16 **(6)** ~~(7)~~ Except as otherwise provided in subsection ~~(8)~~  
17 **(7)**, if, at the time a claim alleging medical malpractice accrues  
18 to a person under section 5838a the person has not reached his or  
19 her eighth birthday, a person shall not bring an action based on  
20 the claim unless the action is commenced on or before the  
21 person's tenth birthday or within the period of limitations set  
22 forth in section 5838a, whichever is later. If, at the time a  
23 claim alleging medical malpractice accrues to a person under  
24 section 5838a, the person has reached his or her eighth birthday,  
25 he or she is subject to the period of limitations set forth in  
26 section 5838a.

27 **(7)** ~~(8)~~ If, at the time a claim alleging medical

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

12       (8) ~~-(9)-~~ If a person was serving a term of imprisonment on  
13 ~~the effective date of the 1993 amendatory act that added this~~  
14 ~~subsection-~~ **April 1, 1994**, and that person has a cause of action  
15 to which the disability of imprisonment would have been  
16 applicable under the former provisions of this section, an entry  
17 may be made or an action may be brought under this act for that  
18 cause of action within 1 year after ~~the effective date of the~~  
19 ~~1993 amendatory act that added this subsection-~~ **April 1, 1994**, or  
20 within any other applicable period of limitation provided by  
21 law.

22       (9) ~~-(10)-~~ If a person died or was released from imprisonment  
23 at any time within the period of 1 year preceding ~~the effective~~  
24 ~~date of the 1993 amendatory act that added this subsection-~~ **April**  
25 **1, 1994**, and that person had a cause of action to which the  
26 disability of imprisonment would have been applicable under the  
27 former provisions of this section on the date of his or her death

1 or release from imprisonment, an entry may be made or an action  
2 may be brought under this act for that cause of action within 1  
3 year after the date of his or her death or release from  
4 imprisonment, or within any other applicable period of limitation  
5 provided by law.

6 (10) ~~(11)~~ As used in this section: ~~—~~, "release

7 (a) "Insane" means suffering under a condition of mental  
8 derangement that prevents the sufferer from comprehending rights  
9 he or she is otherwise bound to know, and does not depend on  
10 whether the individual has been judicially declared to be  
11 insane.

12 (b) "Release from imprisonment" means either of the  
13 following:

14 (i) ~~(a)~~ A final release or discharge from imprisonment in a  
15 county jail.

16 (ii) ~~(b)~~ Release on parole or a final release or discharge  
17 from imprisonment in a state or federal correctional facility.

18 (c) "Sexual conduct" means conduct proscribed by section  
19 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931  
20 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g,  
21 regardless of whether the conduct was the subject of a criminal  
22 prosecution or whether the conduct can be proved beyond a  
23 reasonable doubt.