

# SENATE BILL No. 858

September 22, 2009, Introduced by Senators KAHN, GARCIA, JANSEN, KUIPERS, BARCIA, STAMAS, GEORGE and SWITALSKI and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
(MCL 600.101 to 600.9947) by adding section 2912i.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           **SEC. 2912I. (1) A LICENSED HEALTH CARE PROFESSIONAL OR A**  
2           **LICENSED HEALTH FACILITY OR AGENCY IS NOT LIABLE IN AN ACTION BASED**  
3           **ON MEDICAL MALPRACTICE ARISING OUT OF THE PROVISION OF EMERGENCY**  
4           **MEDICAL CARE IN AN EMERGENCY DEPARTMENT OR OBSTETRICAL UNIT LOCATED**  
5           **IN AND OPERATED BY A HOSPITAL, OR IN A SURGICAL OPERATING ROOM,**  
6           **CARDIAC CATHETERIZATION LABORATORY, OR RADIOLOGY DEPARTMENT**  
7           **IMMEDIATELY FOLLOWING THE EVALUATION OR TREATMENT OF THE PATIENT IN**  
8           **AN EMERGENCY DEPARTMENT, UNLESS THE PLAINTIFF PROVES BY CLEAR AND**  
9           **CONVINCING EVIDENCE THAT THE LICENSED HEALTH CARE PROFESSIONAL'S**

1 ACTIONS CONSTITUTED GROSS NEGLIGENCE.

2 (2) IN AN ACTION DESCRIBED IN SUBSECTION (1), THE COURT SHALL  
3 INSTRUCT THE JURY TO CONSIDER, IN ADDITION TO ALL OTHER RELEVANT  
4 MATTERS, ALL OF THE FOLLOWING:

5 (A) WHETHER THE PERSON PROVIDING CARE HAD THE PATIENT'S FULL  
6 MEDICAL HISTORY, INCLUDING KNOWLEDGE OF PREEXISTING MEDICAL  
7 CONDITIONS, ALLERGIES, AND MEDICATIONS.

8 (B) WHETHER THERE WAS A PREEXISTING LICENSED HEALTH CARE  
9 PROFESSIONAL-PATIENT RELATIONSHIP.

10 (C) THE CIRCUMSTANCES THAT CONSTITUTED THE EMERGENCY.

11 (D) THE CIRCUMSTANCES SURROUNDING THE DELIVERY OF THE  
12 EMERGENCY MEDICAL CARE.

13 (3) AS USED IN THIS SECTION:

14 (A) "EMERGENCY MEDICAL CARE" MEANS BONA FIDE EMERGENCY  
15 SERVICES PROVIDED AFTER THE ONSET OF A MEDICAL OR TRAUMATIC  
16 CONDITION THAT IS MANIFEST BY ACUTE SYMPTOMS, INCLUDING, BUT NOT  
17 LIMITED TO, PAIN, OF SUFFICIENT SEVERITY THAT A FAILURE TO PROVIDE  
18 IMMEDIATE MEDICAL ATTENTION COULD REASONABLY BE EXPECTED TO RESULT  
19 IN SERIOUS JEOPARDY TO THE PATIENT'S HEALTH, SERIOUS IMPAIRMENT TO  
20 BODILY FUNCTIONS, OR SERIOUS DYSFUNCTION OF A BODILY ORGAN OR PART.  
21 EMERGENCY MEDICAL CARE DOES NOT INCLUDE MEDICAL CARE PROVIDED AFTER  
22 THE PATIENT IS STABILIZED AND CAPABLE OF RECEIVING MEDICAL CARE AS  
23 A NONEMERGENCY PATIENT OR CARE THAT IS UNRELATED TO THE ORIGINAL  
24 MEDICAL EMERGENCY.

25 (B) "HOSPITAL" MEANS THAT TERM AS DEFINED IN SECTION 20106 OF  
26 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20106.

27 (C) "LICENSED HEALTH FACILITY OR AGENCY" AND "LICENSED HEALTH

1 CARE PROFESSIONAL" MEAN THOSE TERMS AS DEFINED IN SECTION 5838A.