

By: Representative Nettles

To: Judiciary A

HOUSE BILL NO. 97

1 AN ACT TO AMEND SECTION 15-1-36, MISSISSIPPI CODE OF 1972, TO
2 REDUCE THE PERIOD FOR COMMENCING A MALPRACTICE ACTION AGAINST A
3 NURSING HOME; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 SECTION 1. Section 15-1-36, Mississippi Code of 1972, is
6 amended as follows:

7 15-1-36. (1) For any claim accruing on or before June 30,
8 1998, and except as otherwise provided in this section, no claim
9 in tort may be brought against a licensed physician, osteopath,
10 dentist, hospital, nursing home, nurse, pharmacist, podiatrist,
11 optometrist or chiropractor for injuries or wrongful death arising
12 out of the course of medical, surgical or other professional
13 services unless it is filed within two (2) years from the date the
14 alleged act, omission or neglect shall or with reasonable
15 diligence might have been first known or discovered.

16 (2) For any claim accruing on or after July 1, 1998, and
17 except as otherwise provided in this section, no claim in tort may
18 be brought against a licensed physician, osteopath, dentist,
19 hospital, nursing home, nurse, pharmacist, podiatrist, optometrist
20 or chiropractor for injuries or wrongful death arising out of the
21 course of medical, surgical or other professional services unless
22 it is filed within two (2) years from the date the alleged act,
23 omission or neglect shall or with reasonable diligence might have
24 been first known or discovered, and, except as described in
25 paragraphs (a) and (b) of this subsection, in no event more than
26 seven (7) years after the alleged act, omission or neglect

27 occurred:

28 (a) In the event a foreign object introduced during a
29 surgical or medical procedure has been left in a patient's body,
30 the cause of action shall be deemed to have first accrued at, and
31 not before, the time at which the foreign object is, or with
32 reasonable diligence should have been, first known or discovered
33 to be in the patient's body.

34 (b) In the event the cause of action shall have been
35 fraudulently concealed from the knowledge of the person entitled
36 thereto, the cause of action shall be deemed to have first accrued
37 at, and not before, the time at which such fraud shall be, or with
38 reasonable diligence should have been, first known or discovered.

39 (3) Except as otherwise provided in subsection (4) of this
40 section, if at the time at which the cause of action shall or with
41 reasonable diligence might have been first known or discovered,
42 the person to whom such claim has accrued shall be six (6) years
43 of age or younger, then such minor or the person claiming through
44 such minor may, notwithstanding that the period of time limited
45 pursuant to subsections (1) and (2) of this section shall have
46 expired, commence action on such claim at any time within two (2)
47 years next after the time at which the minor shall have reached
48 his sixth birthday, or shall have died, whichever shall have first
49 occurred.

50 (4) If at the time at which the cause of action shall or
51 with reasonable diligence might have been first known or
52 discovered, the person to whom such claim has accrued shall be a
53 minor without a parent or legal guardian, then such minor or the
54 person claiming through such minor may, notwithstanding that the
55 period of time limited pursuant to subsections (1) and (2) of this
56 section shall have expired, commence action on such claim at any
57 time within two (2) years next after the time at which the minor
58 shall have a parent or legal guardian or shall have died,
59 whichever shall have first occurred; provided, however, that in no
60 event shall the period of limitation begin to run prior to such
61 minor's sixth birthday unless such minor shall have died.

62 (5) If at the time at which the cause of action shall or
63 with reasonable diligence might have been first known or

64 discovered, the person to whom such claim has accrued shall be
65 under the disability of unsoundness of mind, then such person or
66 the person claiming through him may, notwithstanding that the
67 period of time hereinbefore limited shall have expired, commence
68 action on such claim at any time within two (2) years next after
69 the time at which the person to whom the right shall have first
70 accrued shall have ceased to be under the disability, or shall
71 have died, whichever shall have first occurred.

72 (6) When any person who shall be under the disabilities
73 mentioned in subsections (3), (4) and (5) of this section at the
74 time at which his right shall have first accrued, shall depart
75 this life without having ceased to be under such disability, no
76 time shall be allowed by reason of the disability of such person
77 to commence action on the claim of such person beyond the period
78 prescribed under Section 15-1-55, Mississippi Code of 1972.

79 (7) For the purposes of subsection (3) of this section, and
80 only for the purposes of such subsection, the disability of
81 infancy or minority shall be removed from and after a person has
82 reached his sixth birthday.

83 (8) For the purposes of subsection (4) of this section, and
84 only for the purposes of such subsection, the disability of
85 infancy or minority shall be removed from and after a person has
86 reached his sixth birthday or from and after such person shall
87 have a parent or legal guardian, whichever occurs later, unless
88 such disability is otherwise removed by law.

89 (9) The limitation established by this section as to a
90 licensed physician, osteopath, dentist, hospital or nurse shall
91 apply only to actions the cause of which accrued on or after July
92 1, 1976.

93 (10) The limitation established by this section as to
94 pharmacists shall apply only to actions the cause of which accrued
95 on or after July 1, 1978.

96 (11) The limitation established by this section as to

97 podiatrists shall apply only to actions the cause of which accrued
98 on or after July 1, 1979.

99 (12) The limitation established by this section as to
100 optometrists and chiropractors shall apply only to actions the
101 cause of which accrued on or after July 1, 1983.

102 (13) The limitation established by this section as to
103 actions commenced on behalf of minors shall apply only to actions
104 the cause of which accrued on or after July 1, 1989.

105 (14) The limitation established by this section as to
106 nursing homes shall apply only to actions the cause of which
107 accrued after June 30, 1999.

108 SECTION 2. This act shall take effect and be in force from
109 and after July 1, 1999.