HOUSE BILL NO. 1360

AN ACT RELATING TO MEDICAL PROFESSIONAL LIABILITY; TO CREATE SECTION 11-1-58, MISSISSIPPI CODE OF 1972, TO MAKE LEGISLATIVE DECLARATIONS WITH RESPECT TO MALPRACTICE ACTIONS AGAINST HEALTH CARE PROVIDERS; TO AMEND SECTION 11-1-59, MISSISSIPPI CODE OF 1972, TO LIMIT DAMAGES IN MALPRACTICE ACTIONS; TO DEFINE CERTAIN TERMS; TO AMEND SECTION 11-1-61, MISSISSIPPI CODE OF 1972, TO PROVIDE CERTAIN REQUIREMENTS FOR EXPERT WITNESSES IN MALPRACTICE ACTIONS; TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO CONFORM DAMAGE LIMITATIONS TO WRONGFUL DEATH ACTIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 11-1-58, Mississippi Code of 1972:

11-1-58. The Legislature of the State of Mississippi finds and determines as a matter of public policy and does hereby declare: (a) that the citizens of this state are entitled to the best medical care and facilities available and that health care providers, as defined in Section 11-1-59, offer an essential and basic service which requires that the public policy of this state encourage and facilitate the provision of such service to our citizens; (b) that the possibility of injury or death from negligent conduct commands that protection of the public served by health care providers be recognized as an important state interest; (c) that our system of litigation is an essential component of this state interest in providing adequate and reasonable compensation to those persons who suffer from injury or death as a result of negligence of one or more health care providers; (d) that it is the duty and responsibility of the Legislature to balance the rights of our individual citizens to adequate and reasonable compensation with the broad public interest in the provision of services by health care providers;
(e) that the purpose of Sections 11-1-59 and 11-1-61 is to provide for a resolution of the matters which the Legislature has determined is necessary to achieve the balance of rights as set forth herein; and (f) that the provisions of Section 11-1-59 and 11-1-61 are reasonable and necessary in order to preserve the availability and continuity of adequate health care in this state.

SECTION 2. Section 11-1-59, Mississippi Code of 1972, is amended as follows:

11-1-59. (1) For purposes of this section the following definitions shall apply:

(a) "Actual medical expenses" means monies paid to and/or legally obligated to be paid to a health care provider by the claimant, Medicaid, Medicare and/or other third-party payors.

(b) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of damages.

(c) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant from whom a claimant seeks relief with respect to damages.

(d) "Economic damages" means compensatory damages for pecuniary loss including, but not limited to, actual medical expenses, future medical expenses and loss of wages; the term does not include damages for physical pain and suffering and mental anguish, loss of consortium, disfigurement, physical impairment, loss of enjoyment of life, loss of companionship and society or any other nonpecuniary loss.

(e) "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function.

(f) "Health care provider" means a physician, dentist, hospital, nursing home, ambulatory surgical facility, clinic, nurse, pharmacist, podiatrist, optometrist, chiropractor, and employee of any such individual or facility, any other individual
or facility licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession, or any employee of any such other individual or facility.

(g) "Malpractice action" means a cause of action, including those alleging a lack of informed consent or wrongful death as set forth in Section 11-7-13, based on a negligent or intentional act or omission by a health care provider in the rendering of professional services or based on a contract with a health care provider to provide professional services, which act or omission is the proximate cause or proximate contributing cause of an injury or wrongful death.

(h) "Noneconomic damages" means compensatory damages for nonpecuniary loss including, but not limited to, physical pain and suffering and mental anguish, loss of consortium, disfigurement, physical impairment, loss of enjoyment of life and loss of companionship and society.

(2) Notwithstanding and other statute or law that may otherwise apply, this section shall apply to all malpractice actions for damages for injury or wrongful death against any health care provider.

(3) In any malpractice action at law against a health care provider to recover damages based upon a professional negligence theory, the complaint or counterclaim shall not specify the amount of damages claimed, but shall only state that the damages claimed are within the jurisdictional limits of the court to which the pleadings are addressed and whether or not the amount of such damages is Seventy-five Thousand Dollars ($75,000.00) or more, or such other minimum amount as shall be necessary to invoke federal jurisdiction if the action is brought in federal court.

(4) In any such malpractice action against a health care provider, even when such malpractice action is joined with other causes of action and/or includes one or more nonhealth care...
provider defendants, economic and noneconomic damages shall be limited as follows:

(a) A claimant may recover economic damages for medical expenses only to the extent of the claimant's actual medical expenses and his or her future medical expenses as shown to a reasonable degree of medical probability.

(b) Noneconomic damages may not be recovered if the claimant receives no recovery for economic damages.

(c) As limited by paragraph (b) above, a claimant may recover noneconomic damages as shown to a reasonable degree of medical probability which shall not exceed the lesser of (i) the amount of the recovery for economic damages or (ii) Five Hundred Thousand Dollars ($500,000.00).

SECTION 3. Section 11-1-61, Mississippi Code of 1972, is amended as follows:

11-1-61. (1) As a substantive element of any malpractice action for damages for injury or death against a physician or dentist, whether in contract or in tort, arising out of the provision of or failure to provide health care services, a verified written medical expert opinion from a physician or dentist who is licensed to practice medicine in one (1) of the states of the United States and who practices in, or has been engaged in the same or substantially similar medical field during the preceding twelve (12) months as the defendant physician or dentist, shall be filed with the court at the time the original complaint is filed, unless the alleged negligence is obvious to a lay person. This statement shall corroborate reasonable grounds to support the claim of medical negligence, both as to standard of care and causation, and shall indicate that the reviewing physician or dentist is willing to testify as to that opinion, that the opinion can be testified to with reasonable medical probability and that the person rendering the opinion possesses the necessary professional knowledge and expertise coupled with
knowledge of the applicable standard of care to which his or her expert opinion testimony is addressed. The medical expert opinion required by this section shall specify whether any previous opinion by the same medical expert has been disqualified and if so the name of the court and the case number in which the ruling was issued. The rendering of such expert testimony in a medical negligence action shall be considered the practice of medicine or dentistry.

(2) As a substantive element of any malpractice claim for injury or death against a health care provider other than a physician or dentist, as defined in Section 11-1-59, whether in contract or in tort, arising out of the provision of or failure to provide health care services, a verified written professional expert opinion from an individual who is qualified by experience and training in the area addressed in the opinion shall be filed with the court at the time the original complaint is filed, unless the alleged negligence is obvious to a lay person. This statement shall corroborate reasonable grounds to support the claim of professional malpractice, both as to standard of care and causation, and shall indicate that the person giving the written expert opinion is willing to testify as to that opinion, that the opinion can be testified to with reasonable professional probability and that the person rendering the opinion possesses the necessary professional knowledge and expertise coupled with knowledge of the applicable standard of care to which his or her expert opinion testimony is addressed. The professional expert opinion required by this section shall specify whether any previous opinion by the same expert has been disqualified and, if so, the name of the court and the case number in which the ruling was issued.

SECTION 4. Section 11-7-13, Mississippi Code of 1972, is amended as follows:
Whenever the death of any person shall be caused by any real, wrongful or negligent act or omission, or by such unsafe machinery, way or appliances as would, if death had not ensued, have entitled the party injured or damaged thereby to maintain an action and recover damages in respect thereof, or whenever the death of any person shall be caused by the breach of any warranty, express or implied, of the purity or fitness of any foods, drugs, medicines, beverages, tobacco or any and all other articles or commodities intended for human consumption, as would, had the death not ensued, have entitled the person injured or made ill or damaged thereby, to maintain an action and recover damages in respect thereof, and such deceased person shall have left a widow or children or both, or husband or father or mother, or sister, or brother, the person or corporation, or both that would have been liable if death had not ensued, and the representatives of such person shall be liable for damages, notwithstanding the death, and the fact that death was instantaneous shall in no case affect the right of recovery. The action for such damages may be brought in the name of the personal representative of the deceased person for the benefit of all persons entitled under the law to recover, or by widow for the death of her husband, or by the husband for the death of the wife, or by the parent for the death of a child, or in the name of a child, or in the name of a child for the death of a parent, or by a brother for the death of a sister, or by a sister for the death of a brother, or by a sister for the death of a sister, or a brother for the death of a brother, or all parties interested may join in the suit, and there shall be but one (1) suit for the same death which shall ensue for the benefit of all parties concerned, but the determination of such suit shall not bar another action unless it be decided on its merits. In such action the party or parties suing shall recover such damages allowable by law as the jury may determine to be just, taking into consideration all the damages of every kind to the decedent and
all damages of every kind to any and all parties interested in the
suit.

This section shall apply to all personal injuries of servants
and employees received in the service or business of the master or
employer, where such injuries result in death, and to all deaths
caused by breach of warranty, either express or implied, of the
purity and fitness of foods, drugs, medicines, beverages, tobacco
or other articles or commodities intended for human consumption.

Any person entitled to bring a wrongful death action may
assert or maintain a claim for any breach of expressed warranty or
for any breach of implied warranty. A wrongful death action may
be maintained or asserted for strict liability in tort or for any
cause of action known to the law for which any person,
corporation, legal representative or entity would be liable for
damages if death had not ensued.

In an action brought pursuant to the provisions of this
section by the widow, husband, child, father, mother, sister or
brother of the deceased, or by all interested parties, such party
or parties may recover as damages, as such damages are limited by
Section 11-1-59 with respect to a malpractice action brought
against a health care provider, property damages and funeral,
medical or other related expenses incurred by or for the deceased
as a result of such wrongful or negligent act or omission or
breach of warranty, whether an estate has been opened or not. Any
amount, but only such an amount, as may be recovered for property
damage, funeral, medical or other related expenses shall be
subject only to the payment of the debts or liabilities of the
decedent for property damages, funeral, medical or other related
expenses. All other damages recovered under the provisions of
this section shall not be subject to the payment of the debts or
liabilities of the deceased, except as hereinafter provided, and
such damages shall be distributed as follows:
Damages for the injury and death of a married man shall be equally distributed to his wife and children, and if he has no children all shall go to his wife; damages for the injury and death of a married woman shall be equally distributed to the husband and children, and if she has no children all shall go to the husband; and if the deceased has no husband or wife, the damages shall be equally distributed to the children; if the deceased has no husband, nor wife, nor children, the damages shall be distributed equally to the father, mother, brothers and sisters, or such of them as the deceased may have living at his or her death. If the deceased have neither husband, nor wife, nor children, nor father, nor mother, nor sister, nor brother, then the damages shall go to the legal representative, subject to debts and general distribution, and the fact that the deceased was instantly killed shall not affect the right of the legal representative to recover. All references in this section to children shall include descendants of a deceased child, such descendants to take the share of the deceased child by representation. There shall not be, in any case, a distinction between the kindred of the whole and half blood of equal degree. The provisions of this section shall apply to illegitimate children on account of the death of the mother and to the mother on account of the death of an illegitimate child or children, and they shall have all the benefits, rights and remedies conferred by this section on legitimates. The provisions of this section shall apply to illegitimate children on account of the death of the natural father and to the natural father on account of the death of the illegitimate child or children, and they shall have all the benefits, rights and remedies conferred by this section on legitimates, if the survivor has or establishes the right to inherit from the deceased under Section 91-1-15.

Any rights which a blood parent or parents may have under this section are hereby conferred upon and vested in an adopting
parent or adopting parents surviving their deceased adopted child,
just as if the child were theirs by the full blood and had been
born to the adopting parents in lawful wedlock.

SECTION 5. The provisions of this act shall apply only to
personal injury and wrongful death actions against physicians,
dentists, hospitals, nursing homes, ambulatory surgical
facilities, clinics, nurses, pharmacists, podiatrists,
optometrists, chiropractors, any employee of any such individual
or facility, any other individuals or facilities licensed,
certified or otherwise authorized or permitted by law to provide
health care in the ordinary course of business or practice of a
profession, or any employee of any other such individual or
facility which are based on causes of action arising out of
alleged negligent acts or omissions occurring on or after April 1,
2002.

SECTION 6. In the event any provision or portion of this act
shall be declared unconstitutional, the remainder of this act
shall remain in effect in the same manner as if the
unconstitutional provision or portion were not a part of this act.

SECTION 7. This act shall take effect and be in force from
and after its passage.