

By: Representatives Flaggs, Guice

To: Judiciary A

HOUSE BILL NO. 1360

1 AN ACT RELATING TO MEDICAL PROFESSIONAL LIABILITY; TO CREATE  
2 SECTION 11-1-58, MISSISSIPPI CODE OF 1972, TO MAKE LEGISLATIVE  
3 DECLARATIONS WITH RESPECT TO MALPRACTICE ACTIONS AGAINST HEALTH  
4 CARE PROVIDERS; TO AMEND SECTION 11-1-59, MISSISSIPPI CODE OF  
5 1972, TO LIMIT DAMAGES IN MALPRACTICE ACTIONS; TO DEFINE CERTAIN  
6 TERMS; TO AMEND SECTION 11-1-61, MISSISSIPPI CODE OF 1972, TO  
7 PROVIDE CERTAIN REQUIREMENTS FOR EXPERT WITNESSES IN MALPRACTICE  
8 ACTIONS; TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO  
9 CONFORM DAMAGE LIMITATIONS TO WRONGFUL DEATH ACTIONS; AND FOR  
10 RELATED PURPOSES.

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

12 **SECTION 1.** The following shall be codified as Section  
13 11-1-58, Mississippi Code of 1972:

14 11-1-58. The Legislature of the State of Mississippi finds  
15 and determines as a matter of public policy and does hereby  
16 declare: (a) that the citizens of this state are entitled to the  
17 best medical care and facilities available and that health care  
18 providers, as defined in Section 11-1-59, offer an essential and  
19 basic service which requires that the public policy of this state  
20 encourage and facilitate the provision of such service to our  
21 citizens; (b) that the possibility of injury or death from  
22 negligent conduct commands that protection of the public served by  
23 health care providers be recognized as an important state  
24 interest; (c) that our system of litigation is an essential  
25 component of this state interest in providing adequate and  
26 reasonable compensation to those persons who suffer from injury or  
27 death as a result of negligence of one or more health care  
28 providers; (d) that it is the duty and responsibility of the  
29 Legislature to balance the rights of our individual citizens to  
30 adequate and reasonable compensation with the broad public  
31 interest in the provision of services by health care providers;



32 (e) that the purpose of Sections 11-1-59 and 11-1-61 is to provide  
33 for a resolution of the matters which the Legislature has  
34 determined is necessary to achieve the balance of rights as set  
35 forth herein; and (f) that the provisions of Section 11-1-59 and  
36 11-1-61 are reasonable and necessary in order to preserve the  
37 availability and continuity of adequate health care in this state.

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

40 11-1-59. (1) For purposes of this section the following  
41 definitions shall apply:

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

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

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

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

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

61 (f) "Health care provider" means a physician, dentist,  
62 hospital, nursing home, ambulatory surgical facility, clinic,  
63 nurse, pharmacist, podiatrist, optometrist, chiropractor, and  
64 employee of any such individual or facility, any other individual



65 or facility licensed, certified or otherwise authorized or  
66 permitted by law to provide health care in the ordinary course of  
67 business or practice of a profession, or any employee of any such  
68 other individual or facility.

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

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

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

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

95 (4) In any such malpractice action against a health care  
96 provider, even when such malpractice action is joined with other  
97 causes of action and/or includes one or more nonhealth care



98 provider defendants, economic and noneconomic damages shall be  
99 limited as follows:

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

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

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

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

113 11-1-61. (1) As a substantive element of any malpractice  
114 action for damages for injury or death against a physician or  
115 dentist, whether in contract or in tort, arising out of the  
116 provision of or failure to provide health care services, a  
117 verified written medical expert opinion from a physician or  
118 dentist who is licensed to practice medicine in one (1) of the  
119 states of the United States and who practices in, or has been  
120 engaged in the same or substantially similar medical field during  
121 the preceding twelve (12) months as the defendant physician or  
122 dentist, shall be filed with the court at the time the original  
123 complaint is filed, unless the alleged negligence is obvious to a  
124 lay person. This statement shall corroborate reasonable grounds  
125 to support the claim of medical negligence, both as to standard of  
126 care and causation, and shall indicate that the reviewing  
127 physician or dentist is willing to testify as to that opinion,  
128 that the opinion can be testified to with reasonable medical  
129 probability and that the person rendering the opinion possesses  
130 the necessary professional knowledge and expertise coupled with



131 knowledge of the applicable standard of care to which his or her  
132 expert opinion testimony is addressed. The medical expert opinion  
133 required by this section shall specify whether any previous  
134 opinion by the same medical expert has been disqualified and if so  
135 the name of the court and the case number in which the ruling was  
136 issued. The rendering of such expert testimony in a medical  
137 negligence action shall be considered the practice of medicine or  
138 dentistry.

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

161 **SECTION 4.** Section 11-7-13, Mississippi Code of 1972, is  
162 amended as follows:



163 11-7-13. Whenever the death of any person shall be caused by  
164 any real, wrongful or negligent act or omission, or by such unsafe  
165 machinery, way or appliances as would, if death had not ensued,  
166 have entitled the party injured or damaged thereby to maintain an  
167 action and recover damages in respect thereof, or whenever the  
168 death of any person shall be caused by the breach of any warranty,  
169 express or implied, of the purity or fitness of any foods, drugs,  
170 medicines, beverages, tobacco or any and all other articles or  
171 commodities intended for human consumption, as would, had the  
172 death not ensued, have entitled the person injured or made ill or  
173 damaged thereby, to maintain an action and recover damages in  
174 respect thereof, and such deceased person shall have left a widow  
175 or children or both, or husband or father or mother, or sister, or  
176 brother, the person or corporation, or both that would have been  
177 liable if death had not ensued, and the representatives of such  
178 person shall be liable for damages, notwithstanding the death, and  
179 the fact that death was instantaneous shall in no case affect the  
180 right of recovery. The action for such damages may be brought in  
181 the name of the personal representative of the deceased person for  
182 the benefit of all persons entitled under the law to recover, or  
183 by widow for the death of her husband, or by the husband for the  
184 death of the wife, or by the parent for the death of a child, or  
185 in the name of a child, or in the name of a child for the death of  
186 a parent, or by a brother for the death of a sister, or by a  
187 sister for the death of a brother, or by a sister for the death of  
188 a sister, or a brother for the death of a brother, or all parties  
189 interested may join in the suit, and there shall be but one (1)  
190 suit for the same death which shall ensue for the benefit of all  
191 parties concerned, but the determination of such suit shall not  
192 bar another action unless it be decided on its merits. In such  
193 action the party or parties suing shall recover such damages  
194 allowable by law as the jury may determine to be just, taking into  
195 consideration all the damages of every kind to the decedent and



196 all damages of every kind to any and all parties interested in the  
197 suit.

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

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

211 In an action brought pursuant to the provisions of this  
212 section by the widow, husband, child, father, mother, sister or  
213 brother of the deceased, or by all interested parties, such party  
214 or parties may recover as damages, as such damages are limited by  
215 Section 11-1-59 with respect to a malpractice action brought  
216 against a health care provider, property damages and funeral,  
217 medical or other related expenses incurred by or for the deceased  
218 as a result of such wrongful or negligent act or omission or  
219 breach of warranty, whether an estate has been opened or not. Any  
220 amount, but only such an amount, as may be recovered for property  
221 damage, funeral, medical or other related expenses shall be  
222 subject only to the payment of the debts or liabilities of the  
223 deceased for property damages, funeral, medical or other related  
224 expenses. All other damages recovered under the provisions of  
225 this section shall not be subject to the payment of the debts or  
226 liabilities of the deceased, except as hereinafter provided, and  
227 such damages shall be distributed as follows:



228 Damages for the injury and death of a married man shall be  
229 equally distributed to his wife and children, and if he has no  
230 children all shall go to his wife; damages for the injury and  
231 death of a married woman shall be equally distributed to the  
232 husband and children, and if she has no children all shall go to  
233 the husband; and if the deceased has no husband or wife, the  
234 damages shall be equally distributed to the children; if the  
235 deceased has no husband, nor wife, nor children, the damages shall  
236 be distributed equally to the father, mother, brothers and  
237 sisters, or such of them as the deceased may have living at his or  
238 her death. If the deceased have neither husband, nor wife, nor  
239 children, nor father, nor mother, nor sister, nor brother, then  
240 the damages shall go to the legal representative, subject to debts  
241 and general distribution, and the fact that the deceased was  
242 instantly killed shall not affect the right of the legal  
243 representative to recover. All references in this section to  
244 children shall include descendants of a deceased child, such  
245 descendants to take the share of the deceased child by  
246 representation. There shall not be, in any case, a distinction  
247 between the kindred of the whole and half blood of equal degree.  
248 The provisions of this section shall apply to illegitimate  
249 children on account of the death of the mother and to the mother  
250 on account of the death of an illegitimate child or children, and  
251 they shall have all the benefits, rights and remedies conferred by  
252 this section on legitimates. The provisions of this section shall  
253 apply to illegitimate children on account of the death of the  
254 natural father and to the natural father on account of the death  
255 of the illegitimate child or children, and they shall have all the  
256 benefits, rights and remedies conferred by this section on  
257 legitimates, if the survivor has or establishes the right to  
258 inherit from the deceased under Section 91-1-15.

259 Any rights which a blood parent or parents may have under  
260 this section are hereby conferred upon and vested in an adopting





261 parent or adopting parents surviving their deceased adopted child,  
262 just as if the child were theirs by the full blood and had been  
263 born to the adopting parents in lawful wedlock.

264       **SECTION 5.** The provisions of this act shall apply only to  
265 personal injury and wrongful death actions against physicians,  
266 dentists, hospitals, nursing homes, ambulatory surgical  
267 facilities, clinics, nurses, pharmacists, podiatrists,  
268 optometrists, chiropractors, any employee of any such individual  
269 or facility, any other individuals or facilities licensed,  
270 certified or otherwise authorized or permitted by law to provide  
271 health care in the ordinary course of business or practice of a  
272 profession, or any employee of any other such individual or  
273 facility which are based on causes of action arising out of  
274 alleged negligent acts or omissions occurring on or after April 1,  
275 2002.

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

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

