

By: Senator(s) Kirby, Hewes

To: Judiciary

SENATE BILL NO. 2577

1 AN ACT RELATING TO MEDICAL PROFESSIONAL LIABILITY; TO CODIFY  
2 SECTION 11-1-58, MISSISSIPPI CODE OF 1972, TO DECLARE LEGISLATIVE  
3 INTENT; TO AMEND SECTION 11-1-59, MISSISSIPPI CODE OF 1972, TO  
4 LIMIT DAMAGES IN MALPRACTICE ACTIONS; TO AMEND SECTION 11-1-61,  
5 MISSISSIPPI CODE OF 1972, TO REQUIRE A VERIFIED WRITTEN STATEMENT  
6 BY A MEDICAL EXPERT TO BE FILED WITH THE COURT AT THE TIME THE  
7 MEDICAL MALPRACTICE ACTION IS FILED; TO AMEND SECTION 11-7-13,  
8 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE DAMAGE LIMITATIONS  
9 CONTAINED IN THIS ACT ARE APPLICABLE TO MEDICAL MALPRACTICE  
10 ACTIONS BASED ON WRONGFUL DEATH; TO CODIFY SECTION 11-11-8,  
11 MISSISSIPPI CODE OF 1972, TO ESTABLISH VENUE IN MEDICAL  
12 MALPRACTICE ACTIONS; TO CODIFY SECTION 11-49-6, MISSISSIPPI CODE  
13 OF 1972, TO ESTABLISH A FEE SCHEDULE FOR ATTORNEYS IN CONTINGENCY  
14 CASES SEEKING DAMAGES AGAINST A PHYSICIAN; TO AMEND SECTION  
15 85-5-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JUDGMENTS  
16 AGAINST PARTIES FOUND LIABLE IN MEDICAL MALPRACTICE ACTIONS SHALL  
17 BE BASED ON PERCENTAGE OF FAULT AND NOT ON THE DOCTRINE OF JOINT  
18 AND SEVERAL LIABILITY; TO AMEND SECTION 13-1-21, MISSISSIPPI CODE  
19 OF 1972, TO CLARIFY PRIVILEGED COMMUNICATIONS IN MEDICAL  
20 MALPRACTICE ACTIONS; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** The Legislature of the State of Mississippi finds  
23 and determines as a matter of public policy and does hereby  
24 declare:

25 (a) That the citizens of this state are entitled to the  
26 best medical care and facilities available and that health care  
27 providers, as defined in Section 11-1-59, offer an essential and  
28 basic service which requires that the public policy of this state  
29 encourage and facilitate the provision of such service to our  
30 citizens;

31 (b) That the possibility of injury or death from  
32 negligent conduct commands that protection of the public served by  
33 health care providers be recognized as an important state  
34 interest;

35 (c) That our system of litigation is an essential  
36 component of this state's interest in providing adequate and



37 reasonable compensation to those persons who suffer from injury or  
38 death as a result of negligence of one or more health care  
39 providers;

40 (d) That it is the duty and responsibility of the  
41 Legislature to balance the rights of our individual citizens to  
42 adequate and reasonable compensation with the broad public  
43 interest in the provision of services by health care providers;

44 (e) That the purpose of Sections 11-1-59 and 11-1-61 is  
45 to provide for a resolution of the matters which the Legislature  
46 has determined is necessary to achieve the balance of rights as  
47 set forth herein; and

48 (f) That the provisions of Sections 11-1-59 and 11-1-61  
49 are reasonable and necessary in order to preserve the availability  
50 and continuity of adequate health care in this state.

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

53 11-1-59. (1) For purposes of this section the following  
54 definitions shall apply:

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

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

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

64 (d) "Economic damages" means compensatory damages for  
65 pecuniary loss, including, but not limited to, actual medical  
66 expenses, future medical expenses and loss of wages; the term does  
67 not include damages for physical pain and suffering and mental  
68 anguish, loss of consortium, disfigurement, physical impairment,



69 loss of enjoyment of life, loss of companionship and society, or  
70 any other nonpecuniary loss.

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

74 (f) "Health care provider" means a physician, dentist,  
75 hospital, nurse, pharmacist, podiatrist, optometrist,  
76 chiropractor, any employee of any such individual or facility, any  
77 other individual or facility licensed, certified or otherwise  
78 authorized or permitted by law to provide health care in the  
79 ordinary course of business or practice of a profession, or any  
80 employee of any such other individual or facility.

81 (g) "Malpractice action" means a cause of action,  
82 including those alleging a lack of informed consent or wrongful  
83 death as set forth in Section 11-7-13, based on a negligent act or  
84 omission to act by a health care provider in the rendering of  
85 professional services, which act or omission is the proximate  
86 cause or proximate contributing cause of a personal injury or  
87 wrongful death.

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

93 (i) "Periodic payments" means the payment of money or  
94 delivery of other property to the judgment creditor at regular  
95 intervals.

96 (j) "Punitive damages" means any damages awarded as a  
97 penalty or by way of punishment.

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



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

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

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

120           (b) Noneconomic damages may not be recovered if the  
121 claimant receives no recovery for economic damages; and

122           (c) As limited by paragraph (b) above, a claimant may  
123 recover noneconomic damages as shown to a reasonable degree of  
124 medical probability which shall not exceed the lesser of (i) the  
125 amount of the recovery for economic damages or (ii) Two Hundred  
126 Fifty Thousand Dollars (\$250,000.00).

127       (5) In any such malpractice action against a health care  
128 provider, even when such malpractice action is joined with other  
129 causes of action and/or includes one or more nonhealth care  
130 provider defendants, in which punitive damages are sought:

131           (a) Punitive damages may not be awarded if the claimant  
132 does not prove by clear and convincing evidence that the defendant  
133 against whom punitive damages are sought:



134                   (i) Acted with actual malice, gross negligence  
135 which evidences a willful, wanton or reckless disregard for the  
136 safety of others; or

137                   (ii) Committed actual fraud which proximately  
138 caused injury or death of the patient.

139                   (b) In any malpractice action in which the claimant  
140 seeks an award of punitive damages, the trier of fact shall first  
141 determine whether compensatory damages are to be awarded and in  
142 what amount before addressing any issues related to punitive  
143 damages.

144                   (c) If, but only if, an award of compensatory damages  
145 has been made against a defendant, the court may promptly commence  
146 an evidentiary hearing before the same trier of fact to determine  
147 whether punitive damages may be considered.

148                   (d) After such evidentiary hearing, the court shall  
149 determine whether the issue of punitive damages may be submitted  
150 to the trier of fact; and, if so, the trier of fact shall  
151 determine whether to award punitive damages and in what amount.

152                   (e) In situations involving an award of punitive  
153 damages, the fact finder, in determining the amount of punitive  
154 damages, shall consider, to the extent relevant, the following:

155                   (i) The defendant's financial condition and net  
156 worth;

157                   (ii) The nature and reprehensibility of the  
158 defendant's wrongdoing, such as the impact of the defendant's  
159 conduct on the plaintiff, or the relationship of the defendant to  
160 the plaintiff;

161                   (iii) The defendant's awareness of the amount of  
162 harm being caused and the defendant's motivation in causing such  
163 harm;

164                   (iv) The duration of the defendant's misconduct;  
165 and



166                   (v) Any other circumstances shown by the evidence  
167 that bear on determining a proper amount of punitive damages.  
168 The trier of fact shall be instructed that the primary purpose of  
169 punitive damages is to punish the wrongdoer and deter similar  
170 misconduct in the future by the defendant and others while the  
171 purpose of compensatory damages is to make the plaintiff whole.

172                   (f) (i) Before entering judgment for an award of  
173 punitive damages the trial court shall ascertain that the award is  
174 reasonable in its amount and rationally related to the purpose to  
175 punish what occurred giving rise to the award and to deter its  
176 repetition by the defendant and others.

177                   (ii) In determining whether the award is  
178 excessive, the court shall take into consideration the following  
179 factors:

180                                 1. Whether there is a reasonable relationship  
181 between the punitive damage award and the harm likely to result  
182 from the defendant's conduct as well as the harm that actually  
183 occurred;

184                                 2. The degree of reprehensibility of the  
185 defendant's conduct, the duration of that conduct, the defendant's  
186 awareness, any concealment, and the existence and frequency of  
187 similar past conduct;

188                                 3. The financial condition and net worth of  
189 the defendant; and

190                                 4. In mitigation, the imposition of criminal  
191 sanctions on the defendant for his or its conduct and the  
192 existence of other civil awards against the defendant for the same  
193 conduct.

194                   (g) Under no circumstances shall a punitive damage  
195 award in a malpractice action against a health care provider, even  
196 when such malpractice action is joined with other causes of action  
197 and/or includes one or more nonhealth care provider defendants,  
198 exceed an amount equal to the greater of:



199                    (i) 1. Two (2) times the amount of economic  
200 damages; plus

201                    2. An amount equal to any noneconomic damages  
202 awarded by the jury, not to exceed Two Hundred Fifty Thousand  
203 Dollars (\$250,000.00); or

204                    (ii) Two Hundred Thousand Dollars (\$200,000.00).

205                    (h) Because punitive damages are awarded by a jury  
206 against a defendant as a penalty and by way of punishment and not  
207 by way of making a claimant whole, monies paid by such penalized  
208 defendant, after the deduction of attorney's fees in the amount of  
209 twenty-five percent (25%) of the punitive damage award, shall be  
210 paid directly to the State's Emergency Medical Services Operating  
211 Fund, created pursuant to Section 41-59-61.

212                    (6) (a) In any malpractice action, the court shall, at the  
213 request of either party, enter a judgment ordering that money  
214 damages or its equivalent for future damages of the judgment  
215 creditor be paid in whole or in part by periodic payments rather  
216 than by a lump-sum payment if the award equals or exceeds Two  
217 Hundred Fifty Thousand Dollars (\$250,000.00) in future damages.  
218 In entering a judgment ordering the payment of future damages by  
219 periodic payments, the court shall make a specific finding as to  
220 the dollar amount of periodic payments which will compensate the  
221 judgment creditor for such future damages. As a condition to  
222 authorizing periodic payments of future damages, the court shall  
223 require the judgment debtor who is not adequately insured to post  
224 security adequate to assure full payment of such damages awarded  
225 by the judgment. Upon termination of periodic payments of future  
226 damages, the court shall order the return of this security, or so  
227 much as remains, to the judgment creditor.

228                    (b) (i) The judgment ordering the payment of future  
229 damages by periodic payments shall specify the recipient or  
230 recipients of the payments, the dollar amount of the payments, the  
231 interval between payments, and the number of payments or the



232 period of time over which payments shall be made. Such payments  
233 shall only be subject to modification in the event of the death of  
234 the judgment creditor.

235 (ii) In the event that the court finds that the  
236 judgment debtor has exhibited a continuing pattern of failing to  
237 make payments as specified in paragraph (a) of subsection (5), the  
238 court shall find the judgment debtor in contempt of court and, in  
239 addition to the required periodic payments, shall order the  
240 judgment debtor to pay the judgment creditor all damages caused by  
241 the failure to make such periodic payments, including court costs  
242 and attorney's fees.

243 (iii) However, money damages awarded for loss of  
244 future earnings shall not be reduced or payments terminated by  
245 reason of the death of the judgment creditor, but shall be paid to  
246 persons to whom the judgment creditor owed a duty of support, as  
247 provided by law, immediately prior to his or her death. In such  
248 cases the court which rendered the original judgment may, upon  
249 petition of any party in interest, modify the judgment to award  
250 and apportion the unpaid future damages in accordance with this  
251 item (iii).

252 (iv) Following the occurrence or expiration of all  
253 obligations specified in the periodic payment judgment, any  
254 obligation of the judgment debtor to make further payments shall  
255 cease and any security given pursuant to paragraph (a) of  
256 subsection (5) shall revert to the judgment debtor.

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

259 11-1-61. (1) As a substantive element of any malpractice  
260 action for damages for injury or death against a physician or  
261 dentist, whether in contract or in tort, arising out of the  
262 provision of or failure to provide health care services, a  
263 verified written medical expert opinion from a physician or  
264 dentist who is licensed to practice medicine in one of the states



265 of the United States and who practices in, or has been engaged in  
266 the same or substantially similar medical field during the  
267 preceding twelve (12) months as the defendant physician or  
268 dentist, shall be filed with the court at the time the original  
269 complaint is filed, unless the alleged negligence is obvious to a  
270 lay person. This statement shall corroborate reasonable grounds  
271 to support the claim of medical negligence, both as to standard of  
272 care and causation, and shall indicate that the reviewing  
273 physician or dentist is willing to testify as to that opinion,  
274 that the opinion can be testified to with reasonable medical  
275 probability and that the person rendering the opinion possesses  
276 the necessary professional knowledge and expertise coupled with  
277 knowledge of the applicable standard of care to which his or her  
278 expert opinion testimony is addressed. The medical expert opinion  
279 required by this section shall specify whether any previous  
280 opinion by the same medical expert has been disqualified and if so  
281 the name of the court and the case number in which the ruling was  
282 issued. The rendering of such expert testimony in a medical  
283 negligence action shall be considered the practice of medicine or  
284 dentistry.

285 (2) As a substantive element of any malpractice claim for  
286 injury or death against a health care provider other than a  
287 physician or dentist, as defined in Section 11-1-59, whether in  
288 contract or in tort, arising out of the provision of or failure to  
289 provide health care services, a verified written professional  
290 expert opinion from an individual who is qualified by experience  
291 and training in the area addressed in the opinion shall be filed  
292 with the court at the time the original complaint is filed, unless  
293 the alleged negligence is obvious to a lay person. This statement  
294 shall corroborate reasonable grounds to support the claim of  
295 professional malpractice, both as to standard of care and  
296 causation, and shall indicate that the person giving the written  
297 expert opinion is willing to testify as to that opinion, that the



298 opinion can be testified to with reasonable professional  
299 probability and that the person rendering the opinion possesses  
300 the necessary professional knowledge and expertise coupled with  
301 knowledge of the applicable standard of care to which his or her  
302 expert opinion testimony is addressed. The professional expert  
303 opinion required by this section shall specify whether any  
304 previous opinion by the same expert has been disqualified and, if  
305 so, the name of the court and the case number in which the ruling  
306 was issued.

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

309       11-7-13. Whenever the death of any person shall be caused by  
310 any real, wrongful or negligent act or omission, or by such unsafe  
311 machinery, way or appliances as would, if death had not ensued,  
312 have entitled the party injured or damaged thereby to maintain an  
313 action and recover damages in respect thereof, or whenever the  
314 death of any person shall be caused by the breach of any warranty,  
315 express or implied, of the purity or fitness of any foods, drugs,  
316 medicines, beverages, tobacco or any and all other articles or  
317 commodities intended for human consumption, as would, had the  
318 death not ensued, have entitled the person injured or made ill or  
319 damaged thereby, to maintain an action and recover damages in  
320 respect thereof, and such deceased person shall have left a widow  
321 or children or both, or husband or father or mother, or sister, or  
322 brother, the person or corporation, or both that would have been  
323 liable if death had not ensued, and the representatives of such  
324 person shall be liable for damages, notwithstanding the death, and  
325 the fact that death was instantaneous shall in no case affect the  
326 right of recovery. The action for such damages may be brought in  
327 the name of the personal representative of the deceased person for  
328 the benefit of all persons entitled under the law to recover, or  
329 by widow for the death of her husband, or by the husband for the  
330 death of the wife, or by the parent for the death of a child, or



331 in the name of a child, or in the name of a child for the death of  
332 a parent, or by a brother for the death of a sister, or by a  
333 sister for the death of a brother, or by a sister for the death of  
334 a sister, or a brother for the death of a brother, or all parties  
335 interested may join in the suit, and there shall be but one (1)  
336 suit for the same death which shall ensue for the benefit of all  
337 parties concerned, but the determination of such suit shall not  
338 bar another action unless it be decided on its merits. In such  
339 action the party or parties suing shall recover such damages  
340 allowable by law as the jury may determine to be just, taking into  
341 consideration all the damages of every kind to the decedent and  
342 all damages of every kind to any and all parties interested in the  
343 suit.

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

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

357 In an action brought pursuant to the provisions of this  
358 section by the widow, husband, child, father, mother, sister or  
359 brother of the deceased, or by all interested parties, such party  
360 or parties may recover as damages, as damages are limited by  
361 Section 11-1-59 with respect to a malpractice action brought  
362 against a health care provider, property damages and funeral,  
363 medical or other related expenses incurred by or for the deceased



364 as a result of such wrongful or negligent act or omission or  
365 breach of warranty, whether an estate has been opened or not. Any  
366 amount, but only such an amount, as may be recovered for property  
367 damage, funeral, medical or other related expenses shall be  
368 subject only to the payment of the debts or liabilities of the  
369 deceased for property damages, funeral, medical or other related  
370 expenses. All other damages recovered under the provisions of  
371 this section shall not be subject to the payment of the debts or  
372 liabilities of the deceased, except as hereinafter provided, and  
373 such damages shall be distributed as follows:

374 Damages for the injury and death of a married man shall be  
375 equally distributed to his wife and children, and if he has no  
376 children all shall go to his wife; damages for the injury and  
377 death of a married woman shall be equally distributed to the  
378 husband and children, and if she has no children all shall go to  
379 the husband; and if the deceased has no husband or wife, the  
380 damages shall be equally distributed to the children; if the  
381 deceased has no husband, nor wife, nor children, the damages shall  
382 be distributed equally to the father, mother, brothers and  
383 sisters, or such of them as the deceased may have living at his or  
384 her death. If the deceased have neither husband, nor wife, nor  
385 children, nor father, nor mother, nor sister, nor brother, then  
386 the damages shall go to the legal representative, subject to debts  
387 and general distribution, and the fact that the deceased was  
388 instantly killed shall not affect the right of the legal  
389 representative to recover. All references in this section to  
390 children shall include descendants of a deceased child, such  
391 descendants to take the share of the deceased child by  
392 representation. There shall not be, in any case, a distinction  
393 between the kindred of the whole and half blood of equal degree.  
394 The provisions of this section shall apply to illegitimate  
395 children on account of the death of the mother and to the mother  
396 on account of the death of an illegitimate child or children, and



397 they shall have all the benefits, rights and remedies conferred by  
398 this section on legitimates. The provisions of this section shall  
399 apply to illegitimate children on account of the death of the  
400 natural father and to the natural father on account of the death  
401 of the illegitimate child or children, and they shall have all the  
402 benefits, rights and remedies conferred by this section on  
403 legitimates, if the survivor has or establishes the right to  
404 inherit from the deceased under Section 91-1-15.

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

410 **SECTION 5.** The following provision shall be codified as  
411 Section 11-11-8, Mississippi Code of 1972:

412 11-11-8. Notwithstanding any other venue statute or law that  
413 may otherwise apply, except as provided in Section 11-46-13, any  
414 malpractice action for damages for injury or wrongful death  
415 against any health care provider, as that term is defined in  
416 Section 11-1-59, even when such malpractice action is joined with  
417 other causes of action and/or includes one or more nonhealth care  
418 provider defendants, shall be brought in the county in which the  
419 alleged negligent act or omission regarding the malpractice of the  
420 health care provider occurred.

421 **SECTION 6.** The following provision shall be codified as  
422 Section 11-49-6, Mississippi Code of 1972:

423 11-49-6. An attorney shall not contract for or collect a  
424 contingency fee for representing any person seeking damages in  
425 connection with an action for injury or damage against a physician  
426 based upon the physician's alleged professional negligence in  
427 excess of the following limits:

428 (1) Forty percent (40%) of the first Fifty Thousand Dollars  
429 (\$50,000.00) recovered.



430 (2) Thirty-three and one-third percent (33-1/3%) of any  
431 recovery between Fifty Thousand Dollars (\$50,000.00) and Five  
432 Hundred Thousand Dollars (\$500,000.00).

433 (3) Twenty-five percent (25%) of any recovery between Five  
434 Hundred Thousand Dollars (\$500,000.00) and Six Hundred Thousand  
435 Dollars (\$600,000.00).

436 (4) Fifteen percent (15%) of any amount in which the  
437 recovery exceeds Six Hundred Thousand Dollars (\$600,000.00).

438 (5) These limitations shall apply regardless of whether the  
439 recover is by settlement, arbitration or judgment, or whether the  
440 person for whom the recovery is made is a responsible adult, an  
441 infant or a person of unsound mind.

442 (6) If periodic payments are awarded to the plaintiff, the  
443 court shall place a total value on these payments based on the  
444 projected life expectancy of the plaintiff and include this amount  
445 in computing the total award from which attorney's fees are  
446 calculated under this section.

447 **SECTION 7.** Section 85-5-7, Mississippi Code of 1972, is  
448 amended as follows:

449 85-5-7. (1) As used in this section "fault" means an act or  
450 omission of a person which is a proximate cause of injury or death  
451 to another person or persons, damages to property, tangible or  
452 intangible, or economic injury, including, but not limited to,  
453 negligence, malpractice, strict liability, absolute liability or  
454 failure to warn. "Fault" shall not include any tort which results  
455 from an act or omission committed with a specific wrongful intent.

456 (2) Except as may be otherwise provided in subsections (6)  
457 and (9) of this section, in any civil action based on fault, the  
458 liability for damages caused by two (2) or more persons shall be  
459 joint and several only to the extent necessary for the person  
460 suffering injury, death or loss to recover fifty percent (50%) of  
461 his recoverable damages.



462           (3) Except as otherwise provided in subsections (2) and (6)  
463 of this section, in any civil action based on fault, the liability  
464 for damages caused by two (2) or more persons shall be several  
465 only, and not joint and several and a joint tort-feasor shall be  
466 liable only for the amount of damages allocated to him in direct  
467 proportion to his percentage of fault. In assessing percentages  
468 of fault an employer and the employer's employee or a principal  
469 and the principal's agent shall be considered as one (1) defendant  
470 when the liability of such employer or principal has been caused  
471 by the wrongful or negligent act or omission of the employee or  
472 agent.

473           (4) Any defendant held jointly liable under this section  
474 shall have a right of contribution against fellow joint  
475 tort-feasors. A defendant shall be held responsible for  
476 contribution to other joint tort-feasors only for the percentage  
477 of fault assessed to such defendant.

478           (5) Nothing in this section shall eliminate or diminish any  
479 defenses or immunities which currently exist, except as expressly  
480 noted herein.

481           (6) Joint and several liability shall be imposed on all who  
482 consciously and deliberately pursue a common plan or design to  
483 commit a tortious act, or actively take part in it. Any person  
484 held jointly and severally liable under this section shall have a  
485 right of contribution from his fellow defendants acting in  
486 concert.

487           (7) In actions involving joint tort-feasors, the trier of  
488 fact shall determine the percentage of fault for each party  
489 alleged to be at fault.

490           (8) Nothing in this section shall be construed to create a  
491 cause of action. Nothing in this section shall be construed, in  
492 any way, to alter the immunity of any person.

493           (9) In all actions for malpractice against one or more  
494 health care providers, as that term is defined in Section 11-1-59,



495 even when such malpractice actions are joined with other causes of  
496 action and/or include one or more nonhealth care provider  
497 defendants, the court shall enter judgment against each party  
498 found to be liable on the basis of such party's percentage of  
499 fault and not on the basis of the doctrine of joint and several  
500 liability; provided, however, in no event shall the person  
501 suffering injury, death or loss recover, by way of settlement and  
502 judgment combined, an amount in excess of the total amount of  
503 actual damages as determined by the trier of fact and as limited  
504 by Section 11-1-59.

505       **SECTION 8.** Section 13-1-21, Mississippi Code of 1972, is  
506 amended as follows:

507       13-1-21. (1) The Legislature of the State of Mississippi  
508 finds and affirms the importance of the privilege that exists  
509 between a patient and the patient's health care providers which  
510 protects medical facts and communications from disclosure to third  
511 parties. The Legislature further finds and determines as a matter  
512 of public policy and does hereby declare:

513           (a) That health care providers have a fundamental right  
514 to defend themselves when a claim is made by a patient alleging  
515 negligence in the provision of health care services;

516           (b) That prior or other medical history, examinations  
517 and treatment, however remote in time, can and often do affect the  
518 medical decisions and care made the subject of a malpractice claim  
519 against a health care provider, as well as the relative merit of  
520 the claim itself;

521           (c) That courts and lawyers in this state, who  
522 generally are not trained in medicine or other health services,  
523 are not qualified to determine the extent to which prior or other  
524 medical history, examination or treatment affects the medical  
525 decisions and care made the subject of the malpractice claim  
526 against a health care provider, and that such determinations



527 should rest with medical professionals as does the applicable  
528 standard of care in the courts of this state;

529 (d) That to protect the interest of both health care  
530 providers and patient claimants, all information about prior and  
531 other medical history, examination and treatment of the patient  
532 claimant shall be equally available to the patient claimant and to  
533 the health care providers and their respective representatives so  
534 that the information can be evaluated by health care professionals  
535 to determine its relevance to the medical decisions and care made  
536 the subject of a malpractice claim against a health care provider;  
537 and

538 (e) That the provisions of this statute are reasonable  
539 and necessary in order to preserve the availability and continuity  
540 of adequate health care in this state.

541 (2) All terms used in this section shall have the same  
542 meaning as those terms defined in Section 11-1-59.

543 (3) Subject to the provisions of this section, all  
544 communications made to a health care provider by a patient under  
545 his charge or by one seeking professional advice are hereby  
546 declared to be privileged, and such party shall not be required to  
547 disclose the same in any legal proceeding except at the instance  
548 of the patient or, in case of the death of the patient, at the  
549 instance of his personal representative or legal heirs in case  
550 there be no personal representative, or except, if the validity of  
551 the will of the decedent is in question, at the instance of the  
552 personal representative or any of the legal heirs or any  
553 contestant or proponent of the will.

554 (4) Waiver of the medical privilege of patients regarding  
555 the release of medical information to health care personnel, the  
556 State Board of Health or local health departments, made to comply  
557 with Sections 41-3-15, 41-23-1 and 41-23-2 and related rules,  
558 shall be implied. The medical privilege likewise shall be waived  
559 to allow any health care provider to report to the State



560 Department of Health necessary information regarding any person  
561 afflicted with any communicable disease or infected with the  
562 causative agent thereof who neglects or refuses to comply with  
563 accepted protective measures to prevent the transmission of the  
564 communicable disease.

565 (5) Willful violations of the provisions of this section  
566 shall constitute a misdemeanor and shall be punishable as provided  
567 for by law. Any health care provider shall be civilly liable for  
568 damages for any willful or reckless and wanton acts or omissions  
569 constituting such violations.

570 (6) In any action commenced or claim made after July 1,  
571 2002, against a health care provider for professional services  
572 rendered or which should have been rendered, \* \* \* the filing of  
573 such an action shall constitute an express waiver of the medical  
574 privilege, allowing a health care provider otherwise covered by  
575 the medical privilege to meet with, provide, discuss and disclose,  
576 upon written request, all medical information and documentation  
577 held by that individual or entity to the representative of the  
578 patient making the claim and/or to the representative or attorney  
579 of the person or entity against whom the claim is made with or  
580 without the consent or presence of the patient or his  
581 representative.

582 (7) In any disciplinary action commencing on or after July  
583 1, 1987, against a \* \* \* physician \* \* \* or a podiatrist pursuant  
584 to the provisions of Sections 73-25-1 through 73-25-39, 73-25-51  
585 through 73-25-67, 73-25-81 through 73-25-95 and 73-27-1 through  
586 73-27-19, waiver of the medical privilege of a patient to the  
587 extent of any information other than that which would identify the  
588 patient shall be implied.

589 (8) The provisions of this section, including the  
590 confidentiality and waiver provisions, shall be deemed part of the  
591 substantive law of this state enacted by the Legislature for the  
592 purposes stated in subsection (1).



593           **SECTION 9.** The provisions of this act shall apply only to  
594 personal injury and wrongful death actions against physicians,  
595 dentists, hospitals, nursing homes, nurses, pharmacists,  
596 podiatrists, optometrists, chiropractors, any employee of any such  
597 individual or facility, any other individuals or facilities  
598 licensed, certified or otherwise authorized or permitted by law to  
599 provide health care in the ordinary course of business or practice  
600 of a profession, or any employee of any other such individual or  
601 facility which are based on causes of action arising out of  
602 alleged negligent acts or omissions occurring on or after April 1,  
603 2002.

604           **SECTION 10.** In the event any provision or portion of this  
605 act shall be declared unconstitutional, the remainder of this act  
606 shall remain in effect in the same manner as if the  
607 unconstitutional provision or portion were not a part of this act.

608           **SECTION 11.** This act shall take effect and be in force from  
609 and after its passage.

