MISSISSIPPI LEGISLATURE

By: Senator(s) Kirby, Hewes

REGULAR SESSION 2002

To: Judiciary

SENATE BILL NO. 2577

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

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

SECTION 1. 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’s 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 Sections 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
counter-defendant, 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, nurse, pharmacist, podiatrist, optometrist, chiropractor, any 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 act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause or proximate contributing cause of a personal 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.

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

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

(2) Notwithstanding any 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.
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.

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; and

(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) Two Hundred Fifty Thousand Dollars ($250,000.00).

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, in which punitive damages are sought:

(a) Punitive damages may not be awarded if the claimant does not prove by clear and convincing evidence that the defendant against whom punitive damages are sought:
(i) Acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others; or

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

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

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

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

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

(i) The defendant’s financial condition and net worth;

(ii) The nature and reprehensibility of the defendant’s wrongdoing, such as the impact of the defendant’s conduct on the plaintiff, or the relationship of the defendant to the plaintiff;

(iii) The defendant’s awareness of the amount of harm being caused and the defendant’s motivation in causing such harm;

(iv) The duration of the defendant’s misconduct;
(v) Any other circumstances shown by the evidence
that bear on determining a proper amount of punitive damages.

The trier of fact shall be instructed that the primary purpose of
punitive damages is to punish the wrongdoer and deter similar
misconduct in the future by the defendant and others while the
purpose of compensatory damages is to make the plaintiff whole.

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

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

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

2. The degree of reprehensibility of the
defendant’s conduct, the duration of that conduct, the defendant’s
awareness, any concealment, and the existence and frequency of
similar past conduct;

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

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

(g) Under no circumstances shall a punitive damage
award in a 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,

exceed an amount equal to the greater of:
(i) 1. Two (2) times the amount of economic damages; plus

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

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

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

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

(b) (i) The judgment ordering the payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the
period of time over which payments shall be made. Such payments shall only be subject to modification in the event of the death of the judgment creditor.

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

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

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

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 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:

11-7-13. 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 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 deceased 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

S. B. No. 2577
02/SS02/R946
PAGE 12
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 following provision shall be codified as Section 11-11-8, Mississippi Code of 1972:

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

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

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

(1) Forty percent (40%) of the first Fifty Thousand Dollars ($50,000.00) recovered.
(2) Thirty-three and one-third percent (33-1/3%) of any recovery between Fifty Thousand Dollars ($50,000.00) and Five Hundred Thousand Dollars ($500,000.00).

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

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

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

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

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

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

(2) Except as may be otherwise provided in subsections (6) and (9) of this section, in any civil action based on fault, the liability for damages caused by two (2) or more persons shall be joint and several only to the extent necessary for the person suffering injury, death or loss to recover fifty percent (50%) of his recoverable damages.
(3) Except as otherwise provided in subsections (2) and (6) of this section, in any civil action based on fault, the liability for damages caused by two (2) or more persons shall be several only, and not joint and several and a joint tort-feasor shall be liable only for the amount of damages allocated to him in direct proportion to his percentage of fault. In assessing percentages of fault an employer and the employer's employee or a principal and the principal's agent shall be considered as one (1) defendant when the liability of such employer or principal has been caused by the wrongful or negligent act or omission of the employee or agent.

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

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

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

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

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

(9) In all actions for malpractice against one or more health care providers, as that term is defined in Section 11-1-59,
even when such malpractice actions are joined with other causes of
action and/or include one or more nonhealth care provider
defendants, the court shall enter judgment against each party
found to be liable on the basis of such party's percentage of
fault and not on the basis of the doctrine of joint and several
liability; provided, however, in no event shall the person
suffering injury, death or loss recover, by way of settlement and
judgment combined, an amount in excess of the total amount of
actual damages as determined by the trier of fact and as limited
by Section 11-1-59.

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

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

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

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

(c) That courts and lawyers in this state, who
generally are not trained in medicine or other health services,
are not qualified to determine the extent to which prior or other
medical history, examination or treatment affects the medical
decisions and care made the subject of the malpractice claim
against a health care provider, and that such determinations
should rest with medical professionals as does the applicable
standard of care in the courts of this state;

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

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

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

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

(4) Waiver of the medical privilege of patients regarding
the release of medical information to health care personnel, the
State Board of Health or local health departments, made to comply
with Sections 41-3-15, 41-23-1 and 41-23-2 and related rules,
shall be implied. The medical privilege likewise shall be waived
to allow any health care provider to report to the State
Department of Health necessary information regarding any person
afflicted with any communicable disease or infected with the
causative agent thereof who neglects or refuses to comply with
accepted protective measures to prevent the transmission of the
communicable disease.

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

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

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

[8] The provisions of this section, including the
confidentiality and waiver provisions, shall be deemed part of the
substantive law of this state enacted by the Legislature for the
purposes stated in subsection (1).
SECTION 9. The provisions of this act shall apply only to personal injury and wrongful death actions against physicians, dentists, hospitals, nursing homes, 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 10. 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 11. This act shall take effect and be in force from and after its passage.