

By: Representative Blackmon

To: Select Committee on
Civil Justice Reform

HOUSE BILL NO. 9

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
 2 CLARIFY VENUE IN MEDICAL MALPRACTICE ACTIONS; TO CREATE SECTION
 3 11-1-62, MISSISSIPPI CODE OF 1972, TO PROVIDE INDEMNIFICATION OF
 4 PHYSICIANS AND PHARMACISTS FOR ACTIONS INVOLVING FDA APPROVED
 5 DRUGS; TO AMEND SECTION 11-1-63, MISSISSIPPI CODE OF 1972, IN
 6 CONFORMITY THERETO; TO AMEND SECTION 15-1-36, MISSISSIPPI CODE OF
 7 1972, TO PROVIDE NOTICE FOR MEDICAL MALPRACTICE ACTIONS; TO
 8 PROVIDE THAT PAYMENTS FROM COLLATERAL SOURCES MAY BE REDUCED FROM
 9 AWARDS IN MEDICAL MALPRACTICE ACTIONS; TO REQUIRE AFFIDAVITS IN
 10 MEDICAL MALPRACTICE ACTIONS; TO SPECIFY NOTICE IN MEDICAL
 11 MALPRACTICE ACTIONS; TO PROVIDE FOR THE MISSISSIPPI MEDICAL
 12 DISCLOSURE PANEL; TO PROVIDE FOR THE COMPOSITION AND DUTIES OF THE
 13 PANEL; TO PROVIDE FOR DISCLOSURE; TO PROVIDE FOR INFORMED CONSENT;
 14 TO CLARIFY THE STATUTE OF LIMITATIONS IN MEDICAL MALPRACTICE
 15 ACTIONS; TO CREATE SECTION 11-1-67, MISSISSIPPI CODE OF 1972, TO
 16 PROVIDE A LIMITATION ON THE AWARD OF PUNITIVE DAMAGES; TO CREATE
 17 SECTION 11-1-69, MISSISSIPPI CODE OF 1972, TO PROVIDE A LIMITATION
 18 ON THE AWARD OF NONECONOMIC DAMAGES; AND FOR RELATED PURPOSES.

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

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

22 11-11-3. (1) Civil actions of which the circuit court has
 23 original jurisdiction shall be commenced in the county in which
 24 the defendant or any of them may be found or in the county where
 25 the cause of action may occur or accrue and, if the defendant is a
 26 domestic corporation, in the county in which said corporation is
 27 domiciled or in the county where the cause of action may occur or
 28 accrue, except where otherwise provided, and except actions of
 29 trespass on land, ejectment and actions for the statutory penalty
 30 for cutting and boxing trees and firing woods and actions for the
 31 actual value of trees cut which shall be brought in the county
 32 where the land or some part thereof is situated. If a civil
 33 action is brought in an improper county, such action may be
 34 transferred to the proper county pursuant to Section 11-11-17.



35 (2) Civil actions for medical malpractice shall be commenced
36 in the county in which the defendant resides or in the county
37 where the cause of action occurred.

38 **SECTION 2.** The following shall be codified as Section
39 11-1-62, Mississippi Code of 1972:

40 11-1-62. In any civil action alleging damages caused by a
41 prescription drug and absent any negligence on the part of the
42 physician or pharmacist, a physician or pharmacist shall be
43 indemnified by the manufacturer of the prescription drug for any
44 damages if the federal Food and Drug Administration (FDA) has
45 approved that drug for treatment of the condition, disease or
46 illness for which the drug was prescribed. It is the intent of
47 this section to indemnify innocent physicians and pharmacists who
48 are not actively negligent from forum driven lawsuits.

49 **SECTION 3.** Section 11-1-63, Mississippi Code of 1972, is
50 amended as follows:

51 11-1-63. In any action for damages caused by a product
52 except for commercial damage to the product itself:

53 (a) Subject to the provisions of Section 11-1-62, the
54 manufacturer or seller of the product shall not be liable if the
55 claimant does not prove by the preponderance of the evidence that
56 at the time the product left the control of the manufacturer or
57 seller:

58 (i) 1. The product was defective because it
59 deviated in a material way from the manufacturer's specifications
60 or from otherwise identical units manufactured to the same
61 manufacturing specifications, or

62 2. The product was defective because it
63 failed to contain adequate warnings or instructions, or

64 3. The product was designed in a defective
65 manner, or

66 4. The product breached an express warranty
67 or failed to conform to other express factual representations upon



68 which the claimant justifiably relied in electing to use the
69 product; and

70 (ii) The defective condition rendered the product
71 unreasonably dangerous to the user or consumer; and

72 (iii) The defective and unreasonably dangerous
73 condition of the product proximately caused the damages for which
74 recovery is sought.

75 (b) A product is not defective in design or formulation
76 if the harm for which the claimant seeks to recover compensatory
77 damages was caused by an inherent characteristic of the product
78 which is a generic aspect of the product that cannot be eliminated
79 without substantially compromising the product's usefulness or
80 desirability and which is recognized by the ordinary person with
81 the ordinary knowledge common to the community.

82 (c) (i) In any action alleging that a product is
83 defective because it failed to contain adequate warnings or
84 instructions pursuant to paragraph (a)(i)2 of this section, the
85 manufacturer or seller shall not be liable if the claimant does
86 not prove by the preponderance of the evidence that at the time
87 the product left the control of the manufacturer or seller, the
88 manufacturer or seller knew or in light of reasonably available
89 knowledge should have known about the danger that caused the
90 damage for which recovery is sought and that the ordinary user or
91 consumer would not realize its dangerous condition.

92 (ii) An adequate product warning or instruction is
93 one that a reasonably prudent person in the same or similar
94 circumstances would have provided with respect to the danger and
95 that communicates sufficient information on the dangers and safe
96 use of the product, taking into account the characteristics of,
97 and the ordinary knowledge common to an ordinary consumer who
98 purchases the product; or in the case of a prescription drug,
99 medical device or other product that is intended to be used only
100 under the supervision of a physician or other licensed



101 professional person, taking into account the characteristics of,
102 and the ordinary knowledge common to, a physician or other
103 licensed professional who prescribes the drug, device or other
104 product.

105 (d) In any action alleging that a product is defective
106 pursuant to paragraph (a) of this section, the manufacturer or
107 seller shall not be liable if the claimant (i) had knowledge of a
108 condition of the product that was inconsistent with his safety;
109 (ii) appreciated the danger in the condition; and (iii)
110 deliberately and voluntarily chose to expose himself to the danger
111 in such a manner to register assent on the continuance of the
112 dangerous condition.

113 (e) In any action alleging that a product is defective
114 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
115 seller shall not be liable if the danger posed by the product is
116 known or is open and obvious to the user or consumer of the
117 product, or should have been known or open and obvious to the user
118 or consumer of the product, taking into account the
119 characteristics of, and the ordinary knowledge common to, the
120 persons who ordinarily use or consume the product.

121 (f) In any action alleging that a product is defective
122 because of its design pursuant to paragraph (a)(i)3 of this
123 section, the manufacturer or product seller shall not be liable if
124 the claimant does not prove by the preponderance of the evidence
125 that at the time the product left the control of the manufacturer
126 or seller:

127 (i) The manufacturer or seller knew, or in light
128 of reasonably available knowledge or in the exercise of reasonable
129 care should have known, about the danger that caused the damage
130 for which recovery is sought; and

131 (ii) The product failed to function as expected
132 and there existed a feasible design alternative that would have to
133 a reasonable probability prevented the harm. A feasible design



134 alternative is a design that would have to a reasonable
135 probability prevented the harm without impairing the utility,
136 usefulness, practicality or desirability of the product to users
137 or consumers.

138 (g) (i) The manufacturer of a product who is found
139 liable for a defective product pursuant to subsection (a) shall
140 indemnify a product seller for the costs of litigation, any
141 reasonable expenses, reasonable attorney's fees and any damages
142 awarded by the trier of fact unless the seller exercised
143 substantial control over that aspect of the design, testing,
144 manufacture, packaging or labeling of the product that caused the
145 harm for which recovery of damages is sought; the seller altered
146 or modified the product, and the alteration or modification was a
147 substantial factor in causing the harm for which recovery of
148 damages is sought; the seller had actual knowledge of the
149 defective condition of the product at the time he supplied same;
150 or the seller made an express factual representation about the
151 aspect of the product which caused the harm for which recovery of
152 damages is sought.

153 (ii) Subparagraph (i) shall not apply unless the
154 seller has given prompt notice of the suit to the manufacturer
155 within thirty (30) days of the filing of the complaint against the
156 seller.

157 (h) Nothing in this section shall be construed to
158 eliminate any common law defense to an action for damages caused
159 by a product.

160 **SECTION 4.** Section 15-1-36, Mississippi Code of 1972, is
161 amended as follows:

162 15-1-36. (1) For any claim accruing on or before June 30,
163 1998, and except as otherwise provided in this section, no claim
164 in tort may be brought against a licensed physician, osteopath,
165 dentist, hospital, nurse, pharmacist, podiatrist, optometrist or
166 chiropractor for injuries or wrongful death arising out of the



167 course of medical, surgical or other professional services unless
168 it is filed within two (2) years from the date the alleged act,
169 omission or neglect shall or with reasonable diligence might have
170 been first known or discovered.

171 (2) For any claim accruing on or after July 1, 1998, and
172 except as otherwise provided in this section, no claim in tort may
173 be brought against a licensed physician, osteopath, dentist,
174 hospital, nurse, pharmacist, podiatrist, optometrist or
175 chiropractor for injuries or wrongful death arising out of the
176 course of medical, surgical or other professional services unless
177 it is filed within two (2) years from the date the alleged act,
178 omission or neglect shall or with reasonable diligence might have
179 been first known or discovered, and, except as described in
180 paragraphs (a) and (b) of this subsection, in no event more than
181 seven (7) years after the alleged act, omission or neglect
182 occurred:

183 (a) In the event a foreign object introduced during a
184 surgical or medical procedure has been left in a patient's body,
185 the cause of action shall be deemed to have first accrued at, and
186 not before, the time at which the foreign object is, or with
187 reasonable diligence should have been, first known or discovered
188 to be in the patient's body.

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

194 (3) Except as otherwise provided in subsection (4) of this
195 section, if at the time at which the cause of action shall or with
196 reasonable diligence might have been first known or discovered,
197 the person to whom such claim has accrued shall be six (6) years
198 of age or younger, then such minor or the person claiming through
199 such minor may, notwithstanding that the period of time limited



200 pursuant to subsections (1) and (2) of this section shall have
201 expired, commence action on such claim at any time within two (2)
202 years next after the time at which the minor shall have reached
203 his sixth birthday, or shall have died, whichever shall have first
204 occurred.

205 (4) If at the time at which the cause of action shall or
206 with reasonable diligence might have been first known or
207 discovered, the person to whom such claim has accrued shall be a
208 minor without a parent or legal guardian, then such minor or the
209 person claiming through such minor may, notwithstanding that the
210 period of time limited pursuant to subsections (1) and (2) of this
211 section shall have expired, commence action on such claim at any
212 time within two (2) years next after the time at which the minor
213 shall have a parent or legal guardian or shall have died,
214 whichever shall have first occurred; provided, however, that in no
215 event shall the period of limitation begin to run prior to such
216 minor's sixth birthday unless such minor shall have died.

217 (5) If at the time at which the cause of action shall or
218 with reasonable diligence might have been first known or
219 discovered, the person to whom such claim has accrued shall be
220 under the disability of unsoundness of mind, then such person or
221 the person claiming through him may, notwithstanding that the
222 period of time hereinbefore limited shall have expired, commence
223 action on such claim at any time within two (2) years next after
224 the time at which the person to whom the right shall have first
225 accrued shall have ceased to be under the disability, or shall
226 have died, whichever shall have first occurred.

227 (6) When any person who shall be under the disabilities
228 mentioned in subsections (3), (4) and (5) of this section at the
229 time at which his right shall have first accrued, shall depart
230 this life without having ceased to be under such disability, no
231 time shall be allowed by reason of the disability of such person



232 to commence action on the claim of such person beyond the period
233 prescribed under Section 15-1-55, Mississippi Code of 1972.

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

238 (8) For the purposes of subsection (4) of this section, and
239 only for the purposes of such subsection, the disability of
240 infancy or minority shall be removed from and after a person has
241 reached his sixth birthday or from and after such person shall
242 have a parent or legal guardian, whichever occurs later, unless
243 such disability is otherwise removed by law.

244 (9) The limitation established by this section as to a
245 licensed physician, osteopath, dentist, hospital or nurse shall
246 apply only to actions the cause of which accrued on or after July
247 1, 1976.

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

251 (11) The limitation established by this section as to
252 podiatrists shall apply only to actions the cause of which accrued
253 on or after July 1, 1979.

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

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

260 (14) No action based upon the health care provider's
261 professional negligence may be begun unless the defendant has been
262 given notice as provided in Section 7 of this act.

263 **SECTION 5.** After the jury makes an award in an action for
264 personal injury against a health care provider based upon



265 professional negligence, the defendant may present to the
266 presiding judge evidence of any amount payable as a benefit to the
267 plaintiff as a result of the personal injury under the United
268 States Social Security Act, any state or federal income disability
269 or worker's compensation act, any health, sickness or
270 income-disability insurance, accident insurance that provides
271 health benefits or income-disability coverage and any contract or
272 agreement of any group, organization, partnership or corporation
273 to provide, pay for or reimburse the cost of medical, hospital,
274 dental or other health care services. If the defendant elects to
275 present such evidence, the plaintiff may introduce evidence of any
276 amount which the plaintiff has paid or contributed to secure his
277 right to these insurance benefits. The plaintiff may also
278 introduce evidence of any leave time lost due to the personal
279 injury. The presiding judge shall reduce the jury award by the
280 amount of such benefits less any amount which the plaintiff has
281 paid or contributed to secure such benefits.

282 "Health care provider" means an individual licensed,
283 certified or otherwise authorized or permitted by law to provide
284 health care in the ordinary course of business or practice of a
285 profession.

286 "Professional negligence" means a negligent act or omission
287 to act by a health care provider in the rendering of professional
288 services, which act or omission is the proximate cause of a
289 personal injury or wrongful death, provided that such services are
290 within the scope of services for which the provider is licensed
291 and which are not within any restriction imposed by the licensing
292 agency or licensed hospital.

293 **SECTION 6.** Before any action for medical malpractice may be
294 brought, the attorney bringing such action shall sign an affidavit
295 as an officer of the court stating that he has had his case
296 reviewed by a medical expert and the medical expert has determined
297 that medical malpractice is evident in such action.



298 **SECTION 7.** (1) (a) Any person or his authorized agent
299 asserting a health care liability claim shall give written notice
300 of such claim by certified mail, return receipt requested, to each
301 physician or health care provider against whom such claim is being
302 made at least 60 days before the filing of a suit in any court of
303 this state based upon a health care liability claim.

304 (2) In such pleadings as are subsequently filed in any
305 court, each party shall state that it has fully complied with the
306 provisions of this section and shall provide such evidence thereof
307 as the judge of the court may require to determine if the
308 provisions of this act have been met.

309 (3) Notice given as provided in this act shall toll the
310 applicable statute of limitations to and including a period of
311 seventy-five (75) days following the giving of the notice, and
312 this tolling shall apply to all parties and potential parties.

313 (4) All parties shall be entitled to obtain complete and
314 unaltered copies of the claimant's medical records from any other
315 party within ten (10) days from the date of receipt of a written
316 request for such records; provided, however, that the receipt of a
317 medical authorization executed by the claimant herein shall be
318 considered compliance by the claimant with this section.

319 (5) For the purposes of this section, a request for the
320 medical records of a deceased person or a person who is
321 incompetent shall be deemed to be valid if accompanied by an
322 authorization signed by a parent, spouse or adult child of the
323 deceased or incompetent person.

324 **SECTION 8.** Pleadings in a suit based on a health care
325 liability claim shall not specify an amount of money claimed as
326 damages. The defendant may file a special exception to the
327 pleadings on the ground the suit is not within the court's
328 jurisdiction, in which event, the plaintiff shall inform the court
329 and defendant in writing of the total dollar amount claimed. This
330 section does not prevent a party from mentioning the total dollar



331 amount claimed in examining prospective jurors or voir dire or in
332 argument to the court or jury.

333 SECTION 9. (1) In this section, "panel" means the
334 Mississippi Medical Disclosure Panel.

335 (2) In a suit against a physician or health care provider
336 involving a health care liability claim that is based on the
337 failure of the physician or health care provider to disclose or
338 adequately to disclose the risks and hazards involved in the
339 medical care or surgical procedure rendered by the physician or
340 health care provider, the only theory on which recovery may be
341 obtained is that of negligence in failing to disclose the risks or
342 hazards that could have influenced a reasonable person in making a
343 decision to give or withhold consent.

344 (3) (a) The Mississippi Medical disclosure Panel is created
345 to determine which risks and hazards related to medical care and
346 surgical procedures must be disclosed by health care providers or
347 physicians to their patients or persons authorized to consent for
348 their patients and to establish the general form and substance of
349 such disclosure.

350 (b) The panel established herein is administratively
351 attached to the State Department of Health. The State Department
352 of Health, at the request of the panel, shall provide
353 administrative assistance to the panel; and the State Department
354 of Health and the panel shall coordinate administrative
355 responsibilities in order to avoid unnecessary duplication of
356 facilities and services. The State Department of Health, at the
357 request of the panel, shall submit the panel's budget request to
358 the Legislature. The panel shall be subject, except where
359 inconsistent, to the rules and procedures of the State Department
360 of Health.

361 (c) The panel is composed of nine (9) members, with
362 three (3) members licensed to practice law in this state and six



363 (6) members licensed to practice medicine in this state. Members
364 of the panel shall be selected by the State Health Officer.

365 (d) The State Health Officer shall select members of
366 the panel according to the following schedule:

367 (i) One (1) attorney and two (2) physicians to
368 serve a term of two (2) years, which term shall begin on January
369 1, 2003, and expire on December 31, 2005, or until a successor is
370 qualified;

371 (ii) One (1) attorney and two (2) physicians to
372 serve a term of four (4) years, which terms shall begin January 1,
373 2003, and expire December 31, 2007, or until a successor is
374 qualified.

375 (iii) One (1) attorney and two (2) physicians to
376 serve a term of six (6) years, which term shall begin January 1,
377 2003, and expire on December 31, 2009, or until a successor is
378 qualified.

379 Thereafter, at the expiration of the term of each member of
380 the panel so appointed, the State Health Officer shall select a
381 successor, and such successor shall serve for a term of six (6)
382 years, or until his successor is selected. Any member who is
383 absent for three (3) consecutive meetings without the consent of a
384 majority of the panel present at each such meeting may be removed
385 by the State Health Officer at the request of the panel submitted
386 in writing and signed by the chairman. Upon the death,
387 resignation or removal of any member, the State Health Officer
388 shall fill the vacancy by selection for the unexpired portion of
389 the term.

390 (e) Members of the panel are not entitled to
391 compensation for their services, but each panelist is entitled to
392 reimbursement of any necessary expense incurred in the performance
393 of his duties on the panel including necessary travel expenses.



394 (f) Meetings of the panel shall be held at the call of
395 the chairman or on petition of at least three (3) members of the
396 panel.

397 (g) At the first meeting of the panel each year after
398 its members assume their positions, the panelists shall select one
399 of the panel members to serve as chairman and one of the panel
400 members to serve as vice chairman, and each such officer shall
401 serve for a term of one (1) year. The chairman shall preside at
402 meetings of the panel, and in his absence, the vice chairman shall
403 preside.

404 (h) Employees of the State Department of health shall
405 serve as the staff for the panel.

406 (4) (a) To the extent feasible, the panel shall identify
407 and make a thorough examination of all medical treatments and
408 surgical procedures in which physicians and health care providers
409 may be involved in order to determine which of those treatments
410 and procedures do and do not require disclosure of the risks and
411 hazards to the patient or person authorized to consent for the
412 patient.

413 (b) The panel shall prepare separate lists of those
414 medical treatments and surgical procedures that do and do not
415 require disclosure and for those treatments and procedures that do
416 require disclosure shall establish the degree of disclosure
417 required and the form in which the disclosure will be made.

418 (c) Lists prepared under paragraph (b) of this
419 subsection together with written explanations of the degree and
420 form of disclosure shall be published by the State Department of
421 Health.

422 (d) At least annually, or at such other period the
423 panel may determine from time to time, the panel will identify and
424 examine any new medical treatments and surgical procedures that
425 have been developed since its last determinations, shall assign
426 them to the proper lists, and shall establish the degree of



427 disclosure required and the form in which the disclosure will be
428 made. The panel will also examine such treatments and procedures
429 for the purpose of revising lists previously published. These
430 determinations shall be published by the State Department of
431 Health.

432 (5) Before a patient or a person authorized to consent for a
433 patient gives consent to any medical care or surgical procedure
434 that appears on the panel's list requiring disclosure, the
435 physician or health care provider shall disclose to the patient,
436 or person authorized to consent for the patient, the risks and
437 hazards involved in that kind of care or procedure. A physician
438 or health care provider shall be considered to have complied with
439 the requirements of this section if disclosure is made as provided
440 in subsection (6) of this section.

441 (6) Consent to medical care that appears on the panel's list
442 requiring disclosure shall be considered effective under this
443 section if it is given in writing, signed by the patient or a
444 person authorized to give the consent and by a competent witness,
445 and if the written consent specifically states the risks and
446 hazards that are involved in the medical care or surgical
447 procedure in the form and to the degree required by the panel
448 under subsection (4) of this section.

449 (7) (a) In a suit against a physician or health care
450 provider involving a health care liability claim that is based on
451 the negligent failure of the physician or health care provider to
452 disclose or adequately to disclose the risks and hazards involved
453 in the medical care or surgical procedure rendered by the
454 physician or health care provider:

455 (i) Both disclosure made as provided in subsection
456 (5) of this section and failure to disclose based on inclusion of
457 any medical care or surgical procedure on the panel's list for
458 which disclosure is not required shall be admissible in evidence
459 and shall create a rebuttable presumption that the requirements of



460 subsections (5) and (6) of this section have been complied with
461 and this presumption shall be included in the charge to the jury;
462 and

463 (ii) Failure to disclose the risks and hazards
464 involved in any medical care or surgical procedure required to be
465 disclosed under subsections (5) and (6) of this section shall be
466 admissible in evidence and shall create a rebuttable presumption
467 of a negligent failure to conform to the duty of disclosure set
468 forth in subsections (5) and (6) of this section, and this
469 presumption shall be included in the charge to the jury; but
470 failure to disclose may be found not to be negligent if there was
471 an emergency or if for some other reason it was not medically
472 feasible to make a disclosure of the kind that would otherwise
473 have been negligence.

474 (b) If medical care or surgical procedure is rendered
475 with respect to which the panel has made no determination either
476 way regarding a duty of disclosure, the physician or health care
477 provider is under the duty otherwise imposed by law.

478 (8) (a) The panel shall develop and prepare written
479 materials to inform a patient or person authorized to consent for
480 a patient of the risks and hazards of a hysterectomy.

481 (b) The materials shall be available in English,
482 Spanish, and any other language the panel considers appropriate.
483 The information must be presented in a manner understandable to a
484 layperson.

485 (c) The materials must include:

486 (i) A notice that a decision made at any time to
487 refuse to undergo a hysterectomy will not result in the withdrawal
488 or withholding of any benefits provided by programs or projects
489 receiving federal funds or otherwise affect the patient's right to
490 future care or treatment;

491 (ii) The name of the person providing and
492 explaining the materials;



493 (iii) A statement that the patient or person
494 authorized to consent for the patient understands that the
495 hysterectomy is permanent and nonreversible and that the patient
496 will not be able to become pregnant or bear children if she
497 undergoes a hysterectomy;

498 (iv) A statement that the patient has the right to
499 seek a consultation from a second physician;

500 (v) A statement that the patient or person
501 authorized to consent for the patient has been informed that a
502 hysterectomy is a removal of the uterus through an incision in the
503 lower abdomen or vagina and that additional surgery may be
504 necessary to remove or repair other organs, including an ovary,
505 tube, appendix, bladder, rectum or vagina;

506 (vi) A description of the risks and hazards
507 involved in the performance of the procedure; and

508 (vii) A written statement to be signed by the
509 patient or person authorized to consent for the patient indicating
510 that the materials have been provided and explained to the patient
511 or person authorized to consent for the patient and that the
512 patient or person authorized to consent for the patient
513 understands the nature and consequences of a hysterectomy.

514 (d) The physician or health care provider shall obtain
515 informed consent under this section of this act from the patient
516 or person authorized to consent for the patient before performing
517 a hysterectomy unless the hysterectomy is performed in a
518 life-threatening situation in which the physician determines
519 obtaining informed consent is not reasonably possible. If
520 obtaining informed consent is not reasonably possible, the
521 physician or health care provider shall include in the patient's
522 medical records a written statement signed by the physician
523 certifying the nature of the emergency.



524 (e) The panel may not prescribe materials under this
525 section without first consulting with the State Board of Medical
526 Licensure.

527 **SECTION 10.** Notwithstanding any other law, no health care
528 liability claim may be commenced unless the action is filed within
529 two (2) years from the occurrence of the breach or tort or from
530 the date the medical or health care treatment that is the subject
531 of the claim or the hospitalization for which the claim is made is
532 completed; provided that, minors under the age of twelve (12)
533 years shall have until their fourteenth birthday in which to file,
534 or have filed on their behalf, the claim. Except as herein
535 provided, this section applies to all persons regardless of
536 minority or other legal disability.

537 **SECTION 11.** The following shall be codified as Section
538 11-1-67, Mississippi Code of 1972:

539 11-1-67. (1) In all civil actions where an entitlement to
540 punitive damages shall have been established under applicable
541 laws, no punitive damages shall be awarded unless the court finds
542 that the defendant intended to cause harm or acted in a manner
543 exhibiting gross negligence and no award of punitive damages shall
544 exceed the greater of the amount of Three Million Dollars
545 (\$3,000,000.00) or three percent (3%) of such defendant's net
546 worth, whichever is less, unless the finder of fact and court find
547 by clear and convincing evidence that the defendant acted with
548 criminal intent to cause serious physical bodily injury. This
549 restriction shall not be disclosed to the trier of fact, but shall
550 be applied by the court to any punitive damages verdict.

551 (2) Nothing herein shall be construed as creating a right to
552 an award of punitive damages or to limit the duty of the court, or
553 the appellate courts, to scrutinize all punitive damage awards,
554 ensure that all punitive damage awards comply with applicable
555 procedural, evidentiary and constitutional requirements, and to
556 order remittitur where appropriate.



557 **SECTION 12.** The following shall be codified as Section
558 11-1-69, Mississippi Code of 1972:

559 11-1-69. (1) For the purposes of this section, the
560 following words and phrases shall have the meanings ascribed
561 herein unless the context clearly requires otherwise:

562 (a) "Noneconomic damages" means subjective,
563 nonpecuniary damages arising from death, pain, suffering,
564 inconvenience, physical impairment, disfigurement, mental anguish,
565 worry, emotional distress, loss of society and companionship, loss
566 of consortium, bystander injury, injury to reputation,
567 humiliation, loss of the enjoyment of life, hedonic damages, other
568 nonpecuniary damages, and any other theory of damages such as fear
569 of loss, illness or injury. The term "noneconomic damages" shall
570 not include punitive damages.

571 (b) "Actual economic damages" means objectively
572 verifiable pecuniary damages arising from medical expenses and
573 medical care, rehabilitation services, custodial care,
574 disabilities, loss of earnings and earning capacity, loss of
575 income, burial costs, loss of use of property, costs of repair of
576 replacement of property, costs of obtaining substitute domestic
577 services, loss of employment, loss of business or employment
578 opportunities, and other objectively verifiable monetary losses.

579 (2) In any civil action, compensation for the noneconomic
580 damages suffered by the injured plaintiff shall not exceed the
581 amount of One Million Dollars (\$ 1,000,000.00), unless the jury
582 determines that there is a substantial or permanent loss or
583 impairment of a bodily function or substantial disfigurement, or
584 other special circumstances in the case which warrant a finding
585 that imposition of such a limitation would deprive the plaintiff
586 of just compensation for the injuries sustained.

587 (3) If liability is found, then the trier of fact, in
588 addition to other appropriate findings, shall make separate
589 findings specifying the total amount of noneconomic damages and



590 the total amount of actual economic damages for each separate
591 claimant in a manner that the court may apply the restrictions of
592 this section.

593 (4) The trier of fact shall not be advised of the
594 limitations imposed by this section.

595 **SECTION 13.** This act shall take effect and be in force from
596 and after its passage.

