

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 14

1 AN ACT TO AMEND SECTION 11-1-60, MISSISSIPPI CODE OF 1972, TO
 2 REVISE CAPS ON NONECONOMIC DAMAGES; TO PROVIDE FOR A DIRECT ACTION
 3 AGAINST AN INSURER; TO PROVIDE THAT POLICY SHALL CONTAIN
 4 PROVISIONS THAT INSOLVENCY OR BANKRUPTCY OF THE INSURED SHALL NOT
 5 RELEASE THE INSURER FROM LIABILITY; TO PROVIDE THAT ACTIONS MAY BE
 6 BROUGHT AGAINST THE INSURER ALONE IN CERTAIN SITUATIONS; TO
 7 PROVIDE THAT THE INSURANCE POLICY SHALL BE ADMISSIBLE INTO
 8 EVIDENCE; TO PROVIDE A ROLL BACK ON INSURANCE RATES; TO PROVIDE
 9 THAT CLAUSES REQUIRING AN INSURED TO CONSENT BEFORE A CLAIM IS
 10 SETTLED ARE VOID AS AGAINST PUBLIC POLICY; AND FOR RELATED
 11 PURPOSES.

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

13 **SECTION 1.** Section 11-1-60, Mississippi Code of 1972, is
 14 amended as follows:

15 11-1-60. (1) For the purposes of this section, the
 16 following words and phrases shall have the meanings ascribed
 17 herein unless the context clearly requires otherwise:

18 (a) "Noneconomic damages" means subjective,
 19 nonpecuniary damages arising from death, pain, suffering,
 20 inconvenience, mental anguish, worry, emotional distress, loss of
 21 society and companionship, loss of consortium, bystander injury,
 22 physical impairment, injury to reputation, humiliation,
 23 embarrassment, loss of the enjoyment of life, hedonic damages,
 24 other nonpecuniary damages, and any other theory of damages such
 25 as fear of loss, illness or injury. The term "noneconomic
 26 damages" shall not include damages for disfigurement, nor does it
 27 include punitive or exemplary damages.

28 (b) "Actual economic damages" means objectively
 29 verifiable pecuniary damages arising from medical expenses and
 30 medical care, rehabilitation services, custodial care,
 31 disabilities, loss of earnings and earning capacity, loss of

32 income, burial costs, loss of use of property, costs of repair or
33 replacement of property, costs of obtaining substitute domestic
34 services, loss of employment, loss of business or employment
35 opportunities, and other objectively verifiable monetary losses.

36 * * *

37 (2) (a) In any cause of action filed on or after July 1,
38 2004, in the event the trier of fact finds the defendant liable,
39 they shall not award the plaintiff more than Five Million Dollars
40 (\$5,000,000.00) for noneconomic damages.

41 * * *

42 It is the intent of this section to limit all noneconomic
43 damages to the above.

44 (b) The trier of fact shall not be advised of the
45 limitations imposed by this subsection (2) and the judge shall
46 appropriately reduce any award of noneconomic damages that exceeds
47 the applicable limitation.

48 (3) The limitation on noneconomic damages set forth in
49 subsection (2) shall not apply in cases where the judge determines
50 that a jury may impose punitive damages.

51 (4) Nothing in this section shall be construed to impose a
52 limitation on damages for disfigurement, substantial impairment,
53 permanent physical impairment, permanent loss or damage to a
54 reproductive organ resulting in inability to procreate, severe
55 disfigurement, gross malpractice, jury awards of punitive damages
56 or actual economic damages.

57 (5) The Department of Finance and Administration shall
58 adjust the caps in this section for inflation as determined by the
59 consumer price index.

60 **SECTION 2.** (1) No policy or contract of liability insurance
61 shall be issued or delivered in this state unless it contains
62 provisions to the effect that the insolvency or bankruptcy of the
63 insured shall not release the insurer from the payment of damages
64 for injuries sustained or loss occasioned during the existence of

65 the policy. Any judgment which may be rendered against the
66 insured for which the insurer is liable which shall have become
67 executory shall be deemed prima facie evidence of the insolvency
68 of the insured, and an action may thereafter be maintained within
69 the terms and limits of the policy by the injured person or his or
70 her survivors or heirs against the insurer.

71 (2) (a) The injured person or his or her survivors or heirs
72 mentioned in subsection (1) of this section, at their option,
73 shall have a right of direct action against the insurer within the
74 terms and limits of the policy; and such action may be brought
75 against the insurer alone, or against both the insured and insurer
76 jointly and in solido, in the county in which the accident or
77 injury occurred or in the county in which an action could be
78 brought against either the insured or the insurer under the
79 general rules of venue prescribed by the Rules of Civil Procedure
80 only. However, such action may be brought against the insurer
81 alone only when:

82 (i) The insured has been adjudged a bankrupt by a
83 court of competent jurisdiction or when proceedings to adjudge an
84 insured a bankrupt have been commenced before a court of competent
85 jurisdiction;

86 (ii) The insured is insolvent;

87 (iii) Service of citation or other process cannot
88 be made on the insured;

89 (iv) When the cause of action is for damages as a
90 result of an offense or quasi-offense between children and their
91 parents or between married persons; or

92 (v) When the insurer is an uninsured motorist
93 carrier.

94 (b) This right of direct action shall exist whether or
95 not the policy of insurance sued upon was written or delivered in
96 the State of Mississippi and whether or not such policy contains a
97 provision forbidding such direct action, provided the accident or

98 injury occurred within the State of Mississippi. Nothing
99 contained in this section shall be construed to affect the
100 provisions of the policy or contract if such provisions are not in
101 violation of the laws of this state.

102 (3) The policy or contract of liability insurance shall be
103 admissible into evidence in any proceeding regarding such policy
104 or contract of liability insurance.

105 (4) It is the intent of this section that any action brought
106 under the provisions of this section shall be subject to all of
107 the lawful conditions of the policy or contract and the defenses
108 which could be urged by the insurer to a direct action brought by
109 the insured, provided the terms and conditions of such policy or
110 contract are not in violation of the laws of this state.

111 (5) It is also the intent of this section that all liability
112 policies within their terms and limits are executed for the
113 benefit of all injured persons and their survivors or heirs to
114 whom the insured is liable and that it is the purpose of all
115 liability policies to give protection and coverage to all
116 insureds, whether they are named insureds or additional insureds
117 under the omnibus clause, for any legal liability such insured may
118 have as or for a tort-feasor within the terms and limits of such
119 policy.

120 **SECTION 3.** All insurance companies writing medical
121 malpractice insurance in the State of Mississippi shall roll back
122 premium rates to the amount charged on July 1, 2001, unless such
123 roll back shall result in an increase in premium rates. The
124 Commissioner of Insurance shall enforce compliance with the
125 provisions of this section. Any insurance company who violates
126 the provisions of this section shall, upon conviction, be fined
127 Fifty Thousand Dollars (\$50,000.00) for each violation.

128 **SECTION 4.** Any clause or provision in a policy of insurance
129 that requires the insured to consent before a claim is settled, is
130 void as against public policy. The insurance carrier shall have

131 the right to settle or resolve any claim for which it provides
132 coverage and the carrier shall not be liable to the insured for
133 any action taken in the settlement of the claim. No carrier shall
134 base its decision to settle or not settle a claim for which it has
135 coverage in whole or in part on the opinion, desire or decision of
136 the insured. Such decisions shall be made by the carrier based
137 entirely on the facts of the individual claim.

138 **SECTION 5.** This act shall take effect and be in force from
139 and after July 1, 2004, and shall apply to all causes of action
140 filed on or after that date.