

By: Representative Dixon

To: Judiciary A

HOUSE BILL NO. 771

1 AN ACT TO AMEND SECTION 15-1-36, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE STATUTE OF LIMITATIONS ON MEDICAL MALPRACTICE ACTIONS;
3 AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 15-1-36, Mississippi Code of 1972, is
6 amended as follows:

7 15-1-36. (1) For any claim accruing on or before June 30,
8 1998, and except as otherwise provided in this section, no claim
9 in tort may be brought against a licensed physician, osteopath,
10 dentist, hospital, institution for the aged or infirm, nurse,
11 pharmacist, podiatrist, optometrist or chiropractor for injuries
12 or wrongful death arising out of the course of medical, surgical
13 or other professional services unless it is filed within five (5)
14 years from the date the alleged act, omission or neglect shall or
15 with reasonable diligence might have been first known or
16 discovered.

17 (2) For any claim accruing on or after July 1, 1998, and
18 except as otherwise provided in this section, no claim in tort may
19 be brought against a licensed physician, osteopath, dentist,
20 hospital, institution for the aged or infirm, nurse, pharmacist,
21 podiatrist, optometrist or chiropractor for injuries or wrongful
22 death arising out of the course of medical, surgical or other
23 professional services unless it is filed within two (2) years from
24 the date the alleged act, omission or neglect shall or with
25 reasonable diligence might have been first known or discovered,
26 and, except as described in paragraphs (a) and (b) of this



27 subsection, in no event more than seven (7) years after the
28 alleged act, omission or neglect occurred:

29 (a) In the event a foreign object introduced during a
30 surgical or medical procedure has been left in a patient's body,
31 the cause of action shall be deemed to have first accrued at, and
32 not before, the time at which the foreign object is, or with
33 reasonable diligence should have been, first known or discovered
34 to be in the patient's body.

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

40 (3) Except as otherwise provided in subsection (4) of this
41 section, if at the time at which the cause of action shall or with
42 reasonable diligence might have been first known or discovered,
43 the person to whom such claim has accrued shall be six (6) years
44 of age or younger, then such minor or the person claiming through
45 such minor may, notwithstanding that the period of time limited
46 pursuant to subsections (1) and (2) of this section shall have
47 expired, commence action on such claim at any time within two (2)
48 years next after the time at which the minor shall have reached
49 his sixth birthday, or shall have died, whichever shall have first
50 occurred.

51 (4) If at the time at which the cause of action shall or
52 with reasonable diligence might have been first known or
53 discovered, the person to whom such claim has accrued shall be a
54 minor without a parent or legal guardian, then such minor or the
55 person claiming through such minor may, notwithstanding that the
56 period of time limited pursuant to subsections (1) and (2) of this
57 section shall have expired, commence action on such claim at any
58 time within two (2) years next after the time at which the minor
59 shall have a parent or legal guardian or shall have died,



60 whichever shall have first occurred; provided, however, that in no
61 event shall the period of limitation begin to run prior to such
62 minor's sixth birthday unless such minor shall have died.

63 (5) If at the time at which the cause of action shall or
64 with reasonable diligence might have been first known or
65 discovered, the person to whom such claim has accrued shall be
66 under the disability of unsoundness of mind, then such person or
67 the person claiming through him may, notwithstanding that the
68 period of time hereinbefore limited shall have expired, commence
69 action on such claim at any time within two (2) years next after
70 the time at which the person to whom the right shall have first
71 accrued shall have ceased to be under the disability, or shall
72 have died, whichever shall have first occurred.

73 (6) When any person who shall be under the disabilities
74 mentioned in subsections (3), (4) and (5) of this section at the
75 time at which his right shall have first accrued, shall depart
76 this life without having ceased to be under such disability, no
77 time shall be allowed by reason of the disability of such person
78 to commence action on the claim of such person beyond the period
79 prescribed under Section 15-1-55, Mississippi Code of 1972.

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

84 (8) For the purposes of subsection (4) of this section, and
85 only for the purposes of such subsection, the disability of
86 infancy or minority shall be removed from and after a person has
87 reached his sixth birthday or from and after such person shall
88 have a parent or legal guardian, whichever occurs later, unless
89 such disability is otherwise removed by law.

90 (9) The limitation established by this section as to a
91 licensed physician, osteopath, dentist, hospital or nurse shall



92 apply only to actions the cause of which accrued on or after July
93 1, 1976.

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

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

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

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

106 (14) The limitation established by this section as to
107 institutions for the aged or infirm shall apply only to actions
108 the cause of which occurred on or after January 1, 2003.

109 (15) No action based upon the health care provider's
110 professional negligence may be begun unless the defendant has been
111 given at least sixty (60) days' prior written notice of the
112 intention to begin the action. No particular form of notice is
113 required, but it shall notify the defendant of the legal basis of
114 the claim and the type of loss sustained, including with
115 specificity the nature of the injuries suffered. If the notice is
116 served within sixty (60) days prior to the expiration of the
117 applicable statute of limitations, the time for the commencement
118 of the action shall be extended sixty (60) days from the service
119 of the notice for said health care providers and others. This
120 subsection shall not be applicable with respect to any defendant
121 whose name is unknown to the plaintiff at the time of filing the
122 complaint and who is identified therein by a fictitious name.

123 **SECTION 2.** This act shall take effect and be in force from
124 and after July 1, 2012.

