

By: Representative Mims

To: Public Health and Human Services

HOUSE BILL NO. 1479

1 AN ACT TO PROVIDE THAT AN ABORTION CLINIC IS A PROPER PARTY
2 IN A MALPRACTICE ACTION INVOLVING AN ABORTION; TO BRING FORWARD
3 SECTIONS 11-1-60, 11-1-62 AND 11-1-65, MISSISSIPPI CODE OF 1972,
4 FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** In any malpractice action involving an abortion
7 procedure, the clinic where the procedure occurred or where the
8 patient received any counseling or advice regarding such procedure
9 shall be a proper party in the malpractice action.

10 **SECTION 2.** Section 11-1-60, Mississippi Code of 1972, is
11 brought forward as follows:

12 11-1-60. (1) For the purposes of this section, the
13 following words and phrases shall have the meanings ascribed
14 herein unless the context clearly requires otherwise:

15 (a) "Noneconomic damages" means subjective,
16 nonpecuniary damages arising from death, pain, suffering,
17 inconvenience, mental anguish, worry, emotional distress, loss of
18 society and companionship, loss of consortium, bystander injury,
19 physical impairment, disfigurement, injury to reputation,
20 humiliation, embarrassment, loss of the enjoyment of life, hedonic
21 damages, other nonpecuniary damages, and any other theory of
22 damages such as fear of loss, illness or injury. The term
23 "noneconomic damages" shall not include punitive or exemplary
24 damages.

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



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

33 (2) (a) In any cause of action filed on or after September
34 1, 2004, for injury based on malpractice or breach of standard of
35 care against a provider of health care, including institutions for
36 the aged or infirm, in the event the trier of fact finds the
37 defendant liable, they shall not award the plaintiff more than
38 Five Hundred Thousand Dollars (\$500,000.00) for noneconomic
39 damages.

40 (b) In any civil action filed on or after September 1,
41 2004, other than those actions described in paragraph (a) of this
42 subsection, in the event the trier of fact finds the defendant
43 liable, they shall not award the plaintiff more than One Million
44 Dollars (\$1,000,000.00) for noneconomic damages.

45 It is the intent of this section to limit all noneconomic
46 damages to the above.

47 (c) The trier of fact shall not be advised of the
48 limitations imposed by this subsection (2) and the judge shall
49 appropriately reduce any award of noneconomic damages that exceeds
50 the applicable limitation.

51 (3) Nothing contained in subsection (1) of this section
52 shall be construed as creating a cause of action or as setting
53 forth elements of or types of damages that are or are not
54 recoverable in any type of cause of action.

55 **SECTION 3.** Section 11-1-62, Mississippi Code of 1972, is
56 brought forward as follows:

57 11-1-62. In any civil action alleging damages caused by a
58 prescription drug that has been approved by the federal Food and
59 Drug Administration, a physician, optometrist, nurse practitioner
60 or physician assistant may not be sued unless the plaintiff pleads
61 specific facts which, if proven, amount to negligence on the part



62 of the medical provider. It is the intent of this section to
63 immunize innocent medical providers listed in this section who are
64 not actively negligent from forum-driven lawsuits.

65 **SECTION 4.** Section 11-1-65, Mississippi Code of 1972, is
66 brought forward as follows:

67 11-1-65. (1) In any action in which punitive damages are
68 sought:

69 (a) Punitive damages may not be awarded if the claimant
70 does not prove by clear and convincing evidence that the defendant
71 against whom punitive damages are sought acted with actual malice,
72 gross negligence which evidences a willful, wanton or reckless
73 disregard for the safety of others, or committed actual fraud.

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

78 (c) If, but only if, an award of compensatory damages
79 has been made against a party, the court shall promptly commence
80 an evidentiary hearing to determine whether punitive damages may
81 be considered by the same trier of fact.

82 (d) The court shall determine whether the issue of
83 punitive damages may be submitted to the trier of fact; and, if
84 so, the trier of fact shall determine whether to award punitive
85 damages and in what amount.

86 (e) In all cases involving an award of punitive
87 damages, the fact finder, in determining the amount of punitive
88 damages, shall consider, to the extent relevant, the following:
89 the defendant's financial condition and net worth; the nature and
90 reprehensibility of the defendant's wrongdoing, for example, the
91 impact of the defendant's conduct on the plaintiff, or the
92 relationship of the defendant to the plaintiff; the defendant's
93 awareness of the amount of harm being caused and the defendant's
94 motivation in causing such harm; the duration of the defendant's



95 misconduct and whether the defendant attempted to conceal such
96 misconduct; and any other circumstances shown by the evidence that
97 bear on determining a proper amount of punitive damages. The
98 trier of fact shall be instructed that the primary purpose of
99 punitive damages is to punish the wrongdoer and deter similar
100 misconduct in the future by the defendant and others while the
101 purpose of compensatory damages is to make the plaintiff whole.

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

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

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

114 2. The degree of reprehensibility of the
115 defendant's conduct, the duration of that conduct, the defendant's
116 awareness, any concealment, and the existence and frequency of
117 similar past conduct;

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

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

123 (2) The seller of a product other than the manufacturer
124 shall not be liable for punitive damages unless the seller
125 exercised substantial control over that aspect of the design,
126 testing, manufacture, packaging or labeling of the product that
127 caused the harm for which recovery of damages is sought; the



128 seller altered or modified the product, and the alteration or
129 modification was a substantial factor in causing the harm for
130 which recovery of damages is sought; the seller had actual
131 knowledge of the defective condition of the product at the time he
132 supplied same.

133 (3) (a) In any civil action where an entitlement to
134 punitive damages shall have been established under applicable
135 laws, no award of punitive damages shall exceed the following:

136 (i) Twenty Million Dollars (\$20,000,000.00) for a
137 defendant with a net worth of more than One Billion Dollars
138 (\$1,000,000,000.00);

139 (ii) Fifteen Million Dollars (\$15,000,000.00) for
140 a defendant with a net worth of more than Seven Hundred Fifty
141 Million Dollars (\$750,000,000.00) but not more than One Billion
142 Dollars (\$1,000,000,000.00);

143 (iii) Five Million Dollars (\$5,000,000.00) for a
144 defendant with a net worth of more than Five Hundred Million
145 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty
146 Million Dollars (\$750,000,000.00);

147 (iv) Three Million Seven Hundred Fifty Thousand
148 Dollars (\$3,750,000.00) for a defendant with a net worth of more
149 than One Hundred Million Dollars (\$100,000,000.00) but not more
150 than Five Hundred Million Dollars (\$500,000,000.00);

151 (v) Two Million Five Hundred Thousand Dollars
152 (\$2,500,000.00) for a defendant with a net worth of more than
153 Fifty Million Dollars (\$50,000,000.00) but not more than One
154 Hundred Million Dollars (\$100,000,000.00); or

155 (vi) Two percent (2%) of the defendant's net worth
156 for a defendant with a net worth of Fifty Million Dollars
157 (\$50,000,000.00) or less.

158 (b) For the purposes of determining the defendant's net
159 worth in paragraph (a), the amount of the net worth shall be



160 determined in accordance with Generally Accepted Accounting
161 Principles.

162 (c) The limitation on the amount of punitive damages
163 imposed by this subsection (3) shall not be disclosed to the trier
164 of fact, but shall be applied by the court to any punitive damages
165 verdict.

166 (d) The limitation on the amount of punitive damages
167 imposed by this subsection (3) shall not apply to actions brought
168 for damages or an injury resulting from an act or failure to act
169 by the defendant:

170 (i) If the defendant was convicted of a felony
171 under the laws of this state or under federal law which caused the
172 damages or injury; or

173 (ii) While the defendant was under the influence
174 of alcohol or under the influence of drugs other than lawfully
175 prescribed drugs administered in accordance with a prescription.

176 (4) Nothing in this section shall be construed as creating a
177 right to an award of punitive damages or to limit the duty of the
178 court, or the appellate courts, to scrutinize all punitive damage
179 awards, ensure that all punitive damage awards comply with
180 applicable procedural, evidentiary and constitutional
181 requirements, and to order remittitur where appropriate.

182 **SECTION 5.** This act shall take effect and be in force from
183 and after July 1, 2012.

