

By: Representative Dixon

To: Judiciary A

HOUSE BILL NO. 1054

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 TO PROVIDE PENALTIES AGAINST ATTORNEYS WHO ALLOW THE STATUTE OF
4 LIMITATIONS TO EXPIRE; AND FOR RELATED PURPOSES.

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

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

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

18 (2) For any claim accruing on or after July 1, 1998, and
19 except as otherwise provided in this section, no claim in tort may



20 be brought against a licensed physician, osteopath, dentist,
21 hospital, institution for the aged or infirm, nurse, pharmacist,
22 podiatrist, optometrist or chiropractor for injuries or wrongful
23 death arising out of the course of medical, surgical or other
24 professional services unless it is filed within five (5) years
25 from the date the alleged act, omission or neglect shall or with
26 reasonable diligence might have been first known or discovered,
27 and, except as described in paragraphs (a) and (b) of this
28 subsection, in no event more than seven (7) years after the
29 alleged act, omission or neglect occurred:

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

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

41 (3) Except as otherwise provided in subsection (4) of this
42 section, if at the time at which the cause of action shall or with
43 reasonable diligence might have been first known or discovered,
44 the person to whom such claim has accrued shall be six (6) years



45 of age or younger, then such minor or the person claiming through
46 such minor may, notwithstanding that the period of time limited
47 pursuant to subsections (1) and (2) of this section shall have
48 expired, commence action on such claim at any time within two (2)
49 years next after the time at which the minor shall have reached
50 his sixth birthday, or shall have died, whichever shall have first
51 occurred.

52 (4) If at the time at which the cause of action shall or
53 with reasonable diligence might have been first known or
54 discovered, the person to whom such claim has accrued shall be a
55 minor without a parent or legal guardian, then such minor or the
56 person claiming through such minor may, notwithstanding that the
57 period of time limited pursuant to subsections (1) and (2) of this
58 section shall have expired, commence action on such claim at any
59 time within two (2) years next after the time at which the minor
60 shall have a parent or legal guardian or shall have died,
61 whichever shall have first occurred; provided, however, that in no
62 event shall the period of limitation begin to run prior to such
63 minor's sixth birthday unless such minor shall have died.

64 (5) If at the time at which the cause of action shall or
65 with reasonable diligence might have been first known or
66 discovered, the person to whom such claim has accrued shall be
67 under the disability of unsoundness of mind, then such person or
68 the person claiming through him may, notwithstanding that the
69 period of time hereinbefore limited shall have expired, commence



70 action on such claim at any time within two (2) years next after
71 the time at which the person to whom the right shall have first
72 accrued shall have ceased to be under the disability, or shall
73 have died, whichever shall have first occurred.

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

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

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

91 (9) The limitation established by this section as to a
92 licensed physician, osteopath, dentist, hospital or nurse shall
93 apply only to actions the cause of which accrued on or after July
94 1, 1976.



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

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

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

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

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

110 (15) No action based upon the health care provider's
111 professional negligence may be begun unless the defendant has been
112 given at least sixty (60) days' prior written notice of the
113 intention to begin the action. No particular form of notice is
114 required, but it shall notify the defendant of the legal basis of
115 the claim and the type of loss sustained, including with
116 specificity the nature of the injuries suffered. If the notice is
117 served within sixty (60) days prior to the expiration of the
118 applicable statute of limitations, the time for the commencement
119 of the action shall be extended sixty (60) days from the service



120 of the notice for said health care providers and others. This
121 subsection shall not be applicable with respect to any defendant
122 whose name is unknown to the plaintiff at the time of filing the
123 complaint and who is identified therein by a fictitious name.

124 (16) Any attorney who enters into an attorney-client
125 relationship regarding a medical malpractice case and prevents the
126 progress of the case in order to allow the statute of limitations
127 to expire shall be subject to disbarment and shall reimburse all
128 fees and costs to the client. The attorney shall also be subject
129 to civil action for damages and subject to a criminal penalty of
130 not more than one (1) year in the county jail or by a fine not to
131 exceed Five Thousand Dollars (\$5,000.00), or both.

132 **SECTION 2.** This act shall take effect and be in force from
133 and after July 1, 2013.

