

By: Representative Aguirre

To: Judiciary A

HOUSE BILL NO. 731

1 AN ACT TO AMEND SECTIONS 15-1-36 AND 15-1-49, MISSISSIPPI
2 CODE OF 1972, TO REDUCE THE STATUTE OF LIMITATIONS FOR MEDICAL
3 MALPRACTICE CLAIMS TO 1 YEAR; TO BRING FORWARD SECTION 15-1-1,
4 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR STATUTE OF
5 LIMITATIONS, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

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

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



19 (2) For any claim accruing on or after July 1, 1998, and
20 except as otherwise provided in this section, no claim in tort may
21 be brought against a licensed physician, osteopath, dentist,
22 hospital, institution for the aged or infirm, nurse, pharmacist,
23 podiatrist, optometrist or chiropractor for injuries or wrongful
24 death arising out of the course of medical, surgical or other
25 professional services unless it is filed within * * * one (1)
26 years from the date the alleged act, omission or neglect shall or
27 with reasonable diligence might have been first known or
28 discovered, and, except as described in paragraphs (a) and (b) of
29 this subsection, in no event more than seven (7) years after the
30 alleged act, omission or neglect occurred:

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

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

42 (3) Except as otherwise provided in subsection (4) of this
43 section, if at the time at which the cause of action shall or with



44 reasonable diligence might have been first known or discovered,
45 the person to whom such claim has accrued shall be six (6) years
46 of age or younger, then such minor or the person claiming through
47 such minor may, notwithstanding that the period of time limited
48 pursuant to subsections (1) and (2) of this section shall have
49 expired, commence action on such claim at any time within * * *
50 one (1) year next after the time at which the minor shall have
51 reached his sixth birthday, or shall have died, whichever shall
52 have first occurred.

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

65 (5) If at the time at which the cause of action shall or
66 with reasonable diligence might have been first known or
67 discovered, the person to whom such claim has accrued shall be
68 under the disability of unsoundness of mind, then such person or



69 the person claiming through him may, notwithstanding that the
70 period of time hereinbefore limited shall have expired, commence
71 action on such claim at any time within * * * one (1) year next
72 after the time at which the person to whom the right shall have
73 first accrued shall have ceased to be under the disability, or
74 shall have died, whichever shall have first occurred.

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

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

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

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



94 apply only to actions the cause of which accrued on or after July
95 1, 1976.

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

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

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

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

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

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



119 applicable statute of limitations, the time for the commencement
120 of the action shall be extended sixty (60) days from the service
121 of the notice for said health care providers and others. This
122 subsection shall not be applicable with respect to any defendant
123 whose name is unknown to the plaintiff at the time of filing the
124 complaint and who is identified therein by a fictitious name.

125 **SECTION 2.** Section 15-1-49, Mississippi Code of 1972, is
126 amended as follows:

127 15-1-49. (1) All actions for which no other period of
128 limitation is prescribed shall be commenced within three (3) years
129 next after the cause of such action accrued, and not after.

130 (2) In actions for which no other period of limitation is
131 prescribed and which involve latent injury or disease, the cause
132 of action does not accrue until the plaintiff has discovered, or
133 by reasonable diligence should have discovered, the injury.

134 (3) The provisions of subsection (2) of this section shall
135 apply to all pending and subsequently filed actions.

136 (4) The period of limitation for any medical service that is
137 not otherwise prescribed in the law shall be commenced within one
138 (1) year next after the cause of such action accrued, and not
139 after.

140 **SECTION 3.** Section 15-1-1, Mississippi Code of 1972, is
141 brought forward as follows:

142 15-1-1. The provisions of this chapter shall not apply to
143 any suit which is or shall be limited by any statute to be brought



144 within a shorter time than is prescribed in this chapter, and such
145 suit shall be brought within the time that may be limited by such
146 statute.

147 **SECTION 4.** This act shall take effect and be in force from
148 and after July 1, 2016.

