



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3439

Introduced 2/7/2012, by Sen. Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-622	from Ch. 110, par. 2-622
735 ILCS 5/2-1303	from Ch. 110, par. 2-1303
735 ILCS 5/2-1704.5	
735 ILCS 5/8-1901	from Ch. 110, par. 8-1901
735 ILCS 5/8-2501	from Ch. 110, par. 8-2501
745 ILCS 49/30	

Amends the Code of Civil Procedure and the Good Samaritan Act to reenact certain provisions of Public Act 94-677, which was declared to be unconstitutional. Includes explanatory and validation provisions. Makes changes relating to the reenactment. Also makes these substantive changes: Amends the Code of Civil Procedure to lower the rate of interest payable on judgments; and to delay the accrual of interest in certain cases where a federal Medicare lien may exist against the judgment. Includes an inseverability provision. Effective immediately.

LRB097 15944 AJO 62356 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Findings; purpose; text and revisory changes;
5 validation; additional material.

6 (a) The Illinois Supreme Court, in *Lebron v. Gottlieb*
7 *Memorial Hospital*, found that the limitations on noneconomic
8 damages in medical malpractice actions that were created in
9 Public Act 94-677, contained in Section 2-1706.5 of the Code of
10 Civil Procedure, violate the separation of powers clause of the
11 Illinois Constitution. Because Public Act 94-677 contained an
12 inseverability provision, the Court held the Act to be void in
13 its entirety. The Court emphasized, however, that "because the
14 other provisions contained in Public Act 94-677 are deemed
15 invalid solely on inseverability grounds, the legislature
16 remains free to reenact any provisions it deems appropriate".

17 (b) It is the purpose of this Act to reenact certain
18 provisions of Public Act 94-677 that did not involve
19 limitations on noneconomic damages in medical malpractice
20 actions and to validate certain actions taken in reliance on
21 those provisions.

22 (c) This Act reenacts (i) Sections 2-622, 2-1704.5, 8-1901,
23 and 8-2501 of the Code of Civil Procedure and (ii) Section 30
24 of the Good Samaritan Act. In those Sections, certain effective

1 date references and applicability provisions have been changed
2 to reflect the reenactment. This Act does not reenact any other
3 provisions of Public Act 94-677.

4 (d) In this Act, the base text of the reenacted Sections is
5 set forth as it existed at the time of the Supreme Court's
6 decision, including any amendments that occurred after P.A.
7 94-677. Striking and underscoring is used only to show the
8 changes being made to that base text.

9 (e) All otherwise lawful actions taken in reasonable
10 reliance on or pursuant to the Sections reenacted by this Act,
11 as set forth in Public Act 94-677 or subsequently amended, by
12 any officer, employee, agency, or unit of State or local
13 government or by any other person or entity, are hereby
14 validated.

15 With respect to actions taken in relation to matters
16 arising under the Sections reenacted by this Act, a person is
17 rebuttably presumed to have acted in reasonable reliance on and
18 pursuant to the provisions of Public Act 94-677, as those
19 provisions had been amended at the time the action was taken.

20 With respect to their administration of matters arising
21 under the Sections reenacted by this Act, officers, employees,
22 agencies, and units of State and local government shall
23 continue to apply the provisions of Public Act 94-677, as those
24 provisions had been amended at the relevant time.

25 (f) This Act also contains material making new substantive
26 changes. It amends Sections 2-1303 and 8-2006 of the Code of

1 Civil Procedure to lower the rate of interest payable on
2 judgments; to provide for annual indexing of those rates; and
3 to delay the accrual of interest in certain cases where a
4 federal Medicare lien may exist against the judgment.

5 Section 5. The Code of Civil Procedure is amended by
6 reenacting and changing Sections 2-622, 2-1704.5, 8-1901, and
7 8-2501 and by changing Sections 2-1303 and 8-2006 as follows:

8 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

9 Sec. 2-622. Healing art malpractice.

10 (a) In any action, whether in tort, contract or otherwise,
11 in which the plaintiff seeks damages for injuries or death by
12 reason of medical, hospital, or other healing art malpractice,
13 the plaintiff's attorney or the plaintiff, if the plaintiff is
14 proceeding pro se, shall file an affidavit, attached to the
15 original and all copies of the complaint, declaring one of the
16 following:

17 1. That the affiant has consulted and reviewed the
18 facts of the case with a health professional who the
19 affiant reasonably believes: (i) is knowledgeable in the
20 relevant issues involved in the particular action; (ii)
21 practices or has practiced within the last 5 years or
22 teaches or has taught within the last 5 years in the same
23 area of health care or medicine that is at issue in the
24 particular action; and (iii) meets the expert witness

1 standards set forth in paragraphs (a) through (d) of
2 Section 8-2501; that the reviewing health professional has
3 determined in a written report, after a review of the
4 medical record and other relevant material involved in the
5 particular action that there is a reasonable and
6 meritorious cause for the filing of such action; and that
7 the affiant has concluded on the basis of the reviewing
8 health professional's review and consultation that there
9 is a reasonable and meritorious cause for filing of such
10 action. A single written report must be filed to cover each
11 defendant in the action. As to defendants who are
12 individuals, the written report must be from a health
13 professional licensed in the same profession, with the same
14 class of license, as the defendant. For written reports
15 filed as to all other defendants, who are not individuals,
16 the written report must be from a physician licensed to
17 practice medicine in all its branches who is qualified by
18 experience with the standard of care, methods, procedures
19 and treatments relevant to the allegations at issue in the
20 case. In either event, the written report must identify the
21 profession of the reviewing health professional. A copy of
22 the written report, clearly identifying the plaintiff and
23 the reasons for the reviewing health professional's
24 determination that a reasonable and meritorious cause for
25 the filing of the action exists, including the reviewing
26 health care professional's name, address, current license

1 number, and state of licensure, must be attached to the
2 affidavit. Information regarding the preparation of a
3 written report by the reviewing health professional shall
4 not be used to discriminate against that professional in
5 the issuance of medical liability insurance or in the
6 setting of that professional's medical liability insurance
7 premium. No professional organization may discriminate
8 against a reviewing health professional on the basis that
9 the reviewing health professional has prepared a written
10 report.

11 2. That the affiant was unable to obtain a consultation
12 required by paragraph 1 because a statute of limitations
13 would impair the action and the consultation required could
14 not be obtained before the expiration of the statute of
15 limitations. If an affidavit is executed pursuant to this
16 paragraph, the affidavit and written report required by
17 paragraph 1 shall be filed within 90 days after the filing
18 of the complaint. No additional 90-day extensions pursuant
19 to this paragraph shall be granted, except where there has
20 been a withdrawal of the plaintiff's counsel. The defendant
21 shall be excused from answering or otherwise pleading until
22 30 days after being served with an affidavit and a report
23 required by paragraph 1.

24 3. That a request has been made by the plaintiff or his
25 attorney for examination and copying of records pursuant to
26 Part 20 of Article VIII of this Code and the party required

1 to comply under those Sections has failed to produce such
2 records within 60 days of the receipt of the request. If an
3 affidavit is executed pursuant to this paragraph, the
4 affidavit and written report required by paragraph 1 shall
5 be filed within 90 days following receipt of the requested
6 records. All defendants except those whose failure to
7 comply with Part 20 of Article VIII of this Code is the
8 basis for an affidavit under this paragraph shall be
9 excused from answering or otherwise pleading until 30 days
10 after being served with the affidavit and report required
11 by paragraph 1.

12 (b) Where an affidavit and written report are required
13 pursuant to this Section a separate affidavit and written
14 report shall be filed as to each defendant who has been named
15 in the complaint and shall be filed as to each defendant named
16 at a later time.

17 (c) Where the plaintiff intends to rely on the doctrine of
18 "res ipsa loquitur", as defined by Section 2-1113 of this Code,
19 the affidavit and written report must state that, in the
20 opinion of the reviewing health professional, negligence has
21 occurred in the course of medical treatment. The affiant shall
22 certify upon filing of the complaint that he is relying on the
23 doctrine of "res ipsa loquitur".

24 (d) When the attorney intends to rely on the doctrine of
25 failure to inform of the consequences of the procedure, the
26 attorney shall certify upon the filing of the complaint that

1 the reviewing health professional has, after reviewing the
2 medical record and other relevant materials involved in the
3 particular action, concluded that a reasonable health
4 professional would have informed the patient of the
5 consequences of the procedure.

6 (e) Allegations and denials in the affidavit, made without
7 reasonable cause and found to be untrue, shall subject the
8 party pleading them or his attorney, or both, to the payment of
9 reasonable expenses, actually incurred by the other party by
10 reason of the untrue pleading, together with reasonable
11 attorneys' fees to be summarily taxed by the court upon motion
12 made within 30 days of the judgment or dismissal. In no event
13 shall the award for attorneys' fees and expenses exceed those
14 actually paid by the moving party, including the insurer, if
15 any. In proceedings under this paragraph (e), the moving party
16 shall have the right to depose and examine any and all
17 reviewing health professionals who prepared reports used in
18 conjunction with an affidavit required by this Section.

19 (f) A reviewing health professional who in good faith
20 prepares a report used in conjunction with an affidavit
21 required by this Section shall have civil immunity from
22 liability which otherwise might result from the preparation of
23 such report.

24 (g) The failure of the plaintiff to file an affidavit and
25 report in compliance with this Section shall be grounds for
26 dismissal under Section 2-619.

1 (h) This Section does not apply to or affect any actions
2 pending at the time of its effective date, but applies to cases
3 filed on or after its effective date.

4 (i) This amendatory Act of 1997 does not apply to or affect
5 any actions pending at the time of its effective date, but
6 applies to cases filed on or after its effective date.

7 (j) The changes to this Section made by Public Act 94-677
8 and reenacted by this amendatory Act of the 97th ~~94th~~ General
9 Assembly apply to causes of action accruing on or after August
10 25, 2005, as those changes may be amended from time to time ~~its~~
11 ~~effective date.~~

12 (Source: P.A. 94-677, eff. 8-25-05.)

13 (735 ILCS 5/2-1303) (from Ch. 110, par. 2-1303)

14 Sec. 2-1303. Interest on judgment.

15 (a) Judgments recovered in any court shall draw interest at
16 the rate that is equal to the rate at issuance on the 10-year
17 United States Treasury Notes most recently issued prior to ~~of~~
18 ~~9% per annum from~~ the date of the judgment until satisfied or
19 1% 6% per annum when the judgment debtor is a unit of local
20 government, as defined in Section 1 of Article VII of the
21 Constitution, a school district, a community college district,
22 or any other governmental entity. When judgment is entered upon
23 any award, report or verdict, interest shall be computed at the
24 above rate, from the time when made or rendered to the time of
25 entering judgment upon the same, and included in the judgment, l

1 except as provided in subsection (b) of this Section. Interest
2 shall be computed and charged only on the unsatisfied portion
3 of the judgment as it exists from time to time. The judgment
4 debtor may by tender of payment of judgment, costs and interest
5 accrued to the date of tender, stop the further accrual of
6 interest on such judgment notwithstanding the prosecution of an
7 appeal, or other steps to reverse, vacate or modify the
8 judgment.

9 (b) In cases where a federal Medicare lien may exist
10 against the judgment, this statutory interest shall be computed
11 from the day after the federal Medicare program provides
12 confirmation of any lien against the judgment.

13 (Source: P.A. 85-907.)

14 (735 ILCS 5/2-1704.5)

15 Sec. 2-1704.5. Guaranteed payment of future medical
16 expenses and costs of life care.

17 (a) At any time, but no later than 5 days after a verdict
18 in the plaintiff's favor for a plaintiff's future medical
19 expenses and costs of life care is reached, either party in a
20 medical malpractice action may elect, or the court may enter an
21 order, to have the payment of the plaintiff's future medical
22 expenses and costs of life care made under this Section.

23 (b) In all cases in which a defendant in a medical
24 malpractice action is found liable for the plaintiff's future
25 medical expenses and costs of care, the trier of fact shall

1 make the following findings based on evidence presented at
2 trial:

3 (1) the present cash value of the plaintiff's future
4 medical expenses and costs of life care;

5 (2) the current year annual cost of the plaintiff's
6 future medical expenses and costs of life care; and

7 (3) the annual composite rate of inflation that should
8 be applied to the costs specified in item (2).

9 Based upon evidence presented at trial, the trier of fact
10 may also vary the amount of future costs under this Section
11 from year to year to account for different annual expenditures,
12 including the immediate medical and life care needs of the
13 plaintiff. The jury shall not be informed of an election to pay
14 for future medical expenses and costs of life care by
15 purchasing an annuity.

16 (c) When an election is made to pay for future medical
17 expenses and costs of life care by purchasing an annuity, the
18 court shall enter a judgment ordering that the defendant pay
19 the plaintiff an amount equal to 20% of the present cash value
20 of future medical expenses and cost of life care determined
21 under subsection (b) (1) of this Section and ordering that the
22 remaining future expenses and costs be paid by the purchase of
23 an annuity by or on behalf of the defendant from a company that
24 has itself, or is irrevocably supported financially by a
25 company that has, at least 2 of the following 4 ratings: "A+ X"
26 or higher from A.M. Best Company; "AA-" or higher from Standard

1 & Poor's; "Aa3" or higher from Moody's; and "AA-" or higher
2 from Fitch. The annuity must guarantee that the plaintiff will
3 receive annual payments equal to 80% of the amount determined
4 in subsection (b)(2) inflated by the rate determined in
5 subsection (b)(3) for the life of the plaintiff.

6 (d) If the company providing the annuity becomes unable to
7 pay amounts required by the annuity, the defendant shall secure
8 a replacement annuity for the remainder of the plaintiff's life
9 from a company that satisfies the requirements of subsection
10 (c).

11 (e) A plaintiff receiving future payments by means of an
12 annuity under this Section may seek leave of court to assign or
13 otherwise transfer the right to receive such payments in
14 exchange for a negotiated lump sum value of the remaining
15 future payments or any portion of the remaining future payments
16 under the annuity to address an unanticipated financial
17 hardship under such terms as approved by the court.

18 (f) This Section applies to all causes of action accruing
19 on or after August 25, 2005 ~~the effective date of this~~
20 ~~amendatory Act of the 94th General Assembly.~~

21 (Source: P.A. 94-677, eff. 8-25-05.)

22 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

23 Sec. 8-1901. Admission of liability - Effect.

24 (a) The providing of, or payment for, medical, surgical,
25 hospital, or rehabilitation services, facilities, or equipment

1 by or on behalf of any person, or the offer to provide, or pay
2 for, any one or more of the foregoing, shall not be construed
3 as an admission of any liability by such person or persons.
4 Testimony, writings, records, reports or information with
5 respect to the foregoing shall not be admissible in evidence as
6 an admission of any liability in any action of any kind in any
7 court or before any commission, administrative agency, or other
8 tribunal in this State, except at the instance of the person or
9 persons so making any such provision, payment or offer.

10 (b) Any expression of grief, apology, or explanation
11 provided by a health care provider, including, but not limited
12 to, a statement that the health care provider is "sorry" for
13 the outcome to a patient, the patient's family, or the
14 patient's legal representative about an inadequate or
15 unanticipated treatment or care outcome that is provided within
16 72 hours of when the provider knew or should have known of the
17 potential cause of such outcome shall not be admissible as
18 evidence in any action of any kind in any court or before any
19 tribunal, board, agency, or person. The disclosure of any such
20 information, whether proper, or improper, shall not waive or
21 have any effect upon its confidentiality or inadmissibility. As
22 used in this Section, a "health care provider" is any hospital,
23 nursing home or other facility, or employee or agent thereof, a
24 physician, or other licensed health care professional. Nothing
25 in this Section precludes the discovery or admissibility of any
26 other facts regarding the patient's treatment or outcome as

1 otherwise permitted by law.

2 (c) The changes to this Section made by Public Act 94-677
3 and reenacted by this amendatory Act of the 97th ~~94th~~ General
4 Assembly apply to causes of action accruing on or after August
5 25, 2005, as those changes may be amended from time to time ~~its~~
6 ~~effective date.~~

7 (Source: P.A. 94-677, eff. 8-25-05.)

8 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

9 Sec. 8-2501. Expert Witness Standards. In any case in which
10 the standard of care applicable to a medical professional is at
11 issue, the court shall apply the following standards to
12 determine if a witness qualifies as an expert witness and can
13 testify on the issue of the appropriate standard of care.

14 (a) Whether the witness is board certified or board
15 eligible, or has completed a residency, in the same or
16 substantially similar medical specialties as the defendant and
17 is otherwise qualified by significant experience with the
18 standard of care, methods, procedures, and treatments relevant
19 to the allegations against the defendant;

20 (b) Whether the witness has devoted a majority of his or
21 her work time to the practice of medicine, teaching or
22 University based research in relation to the medical care and
23 type of treatment at issue which gave rise to the medical
24 problem of which the plaintiff complains;

25 (c) whether the witness is licensed in the same profession

1 with the same class of license as the defendant if the
2 defendant is an individual; and

3 (d) whether, in the case against a nonspecialist, the
4 witness can demonstrate a sufficient familiarity with the
5 standard of care practiced in this State.

6 An expert shall provide evidence of active practice,
7 teaching, or engaging in university-based research. If
8 retired, an expert must provide evidence of attendance and
9 completion of continuing education courses for 3 years previous
10 to giving testimony. An expert who has not actively practiced,
11 taught, or been engaged in university-based research, or any
12 combination thereof, during the preceding 5 years may not be
13 qualified as an expert witness.

14 The changes to this Section made by Public Act 94-677 and
15 reenacted by this amendatory Act of the 97th ~~94th~~ General
16 Assembly apply to causes of action accruing on or after August
17 25, 2005, as those changes may be amended from time to time ~~its~~
18 ~~effective date.~~

19 (Source: P.A. 94-677, eff. 8-25-05.)

20 Section 10. The Good Samaritan Act is amended by reenacting
21 and changing Section 30 as follows:

22 (745 ILCS 49/30)

23 Sec. 30. Free medical clinic; exemption from civil
24 liability for services performed without compensation.

1 (a) A person licensed under the Medical Practice Act of
2 1987, a person licensed to practice the treatment of human
3 ailments in any other state or territory of the United States,
4 or a health care professional, including but not limited to an
5 advanced practice nurse, retired physician, physician
6 assistant, nurse, pharmacist, physical therapist, podiatrist,
7 or social worker licensed in this State or any other state or
8 territory of the United States, who, in good faith, provides
9 medical treatment, diagnosis, or advice as a part of the
10 services of an established free medical clinic providing care,
11 including but not limited to home visits, without charge to
12 patients which is limited to care that does not require the
13 services of a licensed hospital or ambulatory surgical
14 treatment center and who receives no fee or compensation from
15 that source shall not be liable for civil damages as a result
16 of his or her acts or omissions in providing that medical
17 treatment, except for willful or wanton misconduct.

18 (b) For purposes of this Section, a "free medical clinic"
19 is an organized community based program providing medical care
20 without charge to individuals, at which the care provided does
21 not include an overnight stay in a health-care facility.

22 (c) The provisions of subsection (a) of this Section do not
23 apply to a particular case unless the free medical clinic has
24 posted in a conspicuous place on its premises an explanation of
25 the exemption from civil liability provided herein.

26 (d) The immunity from civil damages provided under

1 subsection (a) also applies to physicians, retired physicians,
2 hospitals, and other health care providers that provide further
3 medical treatment, diagnosis, or advice, including but not
4 limited to hospitalization, office visits, and home visits, to
5 a patient upon referral from an established free medical clinic
6 without fee or compensation.

7 (d-5) A free medical clinic may receive reimbursement from
8 the Illinois Department of Public Aid, provided any
9 reimbursements shall be used only to pay overhead expenses of
10 operating the free medical clinic and may not be used, in whole
11 or in part, to provide a fee or other compensation to any
12 person licensed under the Medical Practice Act of 1987 or any
13 other health care professional who is receiving an exemption
14 under this Section. Any health care professional receiving an
15 exemption under this Section may not receive any fee or other
16 compensation in connection with any services provided to, or
17 any ownership interest in, the clinic. Medical care shall not
18 include an overnight stay in a health care facility.

19 (e) Nothing in this Section prohibits a free medical clinic
20 from accepting voluntary contributions for medical services
21 provided to a patient who has acknowledged his or her ability
22 and willingness to pay a portion of the value of the medical
23 services provided.

24 (f) Any voluntary contribution collected for providing
25 care at a free medical clinic shall be used only to pay
26 overhead expenses of operating the clinic. No portion of any

1 moneys collected shall be used to provide a fee or other
2 compensation to any person licensed under Medical Practice Act
3 of 1987.

4 (g) The changes to this Section made by Public Act 94-677
5 and reenacted by this amendatory Act of the 97th ~~94th~~ General
6 Assembly apply to causes of action accruing on or after August
7 25, 2005, as those changes may be amended from time to time ~~its~~
8 ~~effective date.~~

9 (Source: P.A. 94-677, eff. 8-25-05.)

10 Section 97. Inseverability. The provisions of this Act are
11 mutually dependent and inseverable. If any provision is held
12 invalid, then this entire Act, including all new and amendatory
13 provisions, is invalid.

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.