



## 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.