



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2160

Introduced 2/15/2013, by Sen. Jason A. Barickman

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 5/2-1704.6 new	
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 by the Illinois Supreme Court in *Lebron v. Gottlieb Memorial Hospital*. 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. Effective immediately.

LRB098 07524 HEP 37595 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*, 237 Ill.2d 217 (2010), found that the
8 limitations on noneconomic damages in medical malpractice
9 actions that were created in Public Act 94-677, contained in
10 Section 2-1706.5 of the Code of Civil Procedure, violate the
11 separation of powers clause of the Illinois Constitution.
12 Because Public Act 94-677 contained an inseverability
13 provision, the Court held the Act to be void in its entirety.
14 The Court emphasized, however, that "because the other
15 provisions contained in Public Act 94-677 are deemed invalid
16 solely on inseverability grounds, the legislature remains free
17 to reenact any provisions it deems appropriate".

18 (b) "An Act concerning civil law", approved January 18,
19 2013 (Public Act 97-1145), re-enacted Sections 2-622, 8-1901,
20 and 8-2501 and repealed Section 1704.5 of the Code of Civil
21 Procedure with the effect of removing from the statutes any
22 changes to those Sections made by Public Act 94-677.

23 (c) It is the purpose of this Act to reenact certain
24 provisions of Public Act 94-677 that did not involve

1 limitations on noneconomic damages in medical malpractice
2 actions and to validate certain actions taken in reliance on
3 those provisions.

4 (d) To accomplish the purpose identified in subsection (c)
5 of this Section, this Act: (i) adds Section 2-1704.6 to the
6 Code of Civil Procedure; (ii) amends Sections 2-622, 8-1901,
7 and 8-2501 of the Code of Civil Procedure; and (iii) re-enacts
8 Section 30 of the Good Samaritan Act. Section 2-1704.6 is added
9 to replace Section 2-1704.5 of the Code of Civil Procedure,
10 which had been added by Public Act 94-677 and repealed by
11 Public Act 97-1145. Sections 2-622, 8-1901, and 8-2501 of the
12 Code of Civil Procedure are amended to reflect the Sections as
13 they were changed by 94-677. In those Sections, certain
14 effective date references and applicability provisions have
15 been changed to reflect the reenactment intended by this Act.
16 This Act does not reenact any other provisions of Public Act
17 94-677.

18 (e) In this Act, the base text of the reenacted Section 30
19 of the Good Samaritan Act is set forth as it existed at the
20 time of the Supreme Court's decision, including any amendments
21 that occurred after P.A. 94-677. Striking and underscoring is
22 used only to show the changes being made to that base text.

23 (f) All otherwise lawful actions taken in reasonable
24 reliance on or pursuant to the Sections reenacted by this Act,
25 as set forth in Public Act 94-677 or subsequently amended, by
26 any officer, employee, agency, or unit of State or local

1 government or by any other person or entity, are hereby
2 validated.

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

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

13 (g) This Act also contains material making new substantive
14 changes. It amends Section 2-1303 of the Code of Civil
15 Procedure to lower the rate of interest payable on judgments;
16 to provide for annual indexing of those rates; and to delay the
17 accrual of interest in certain cases where a federal Medicare
18 lien may exist against the judgment.

19 Section 5. The Code of Civil Procedure is amended by
20 changing Sections 2-622, 2-1303, 8-1901, and 8-2501 and by
21 adding Section 2-1704.6 as follows:

22 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

23 Sec. 2-622. Healing art malpractice.

24 (a) In any action, whether in tort, contract or otherwise,

1 in which the plaintiff seeks damages for injuries or death by
2 reason of medical, hospital, or other healing art malpractice,
3 the plaintiff's attorney or the plaintiff, if the plaintiff is
4 proceeding pro se, shall file an affidavit, attached to the
5 original and all copies of the complaint, declaring one of the
6 following:

7 1. That the affiant has consulted and reviewed the
8 facts of the case with a health professional who the
9 affiant reasonably believes: (i) is knowledgeable in the
10 relevant issues involved in the particular action; (ii)
11 practices or has practiced within the last 5 ~~6~~ years or
12 teaches or has taught within the last 5 ~~6~~ years in the same
13 area of health care or medicine that is at issue in the
14 particular action; and (iii) meets the expert witness
15 standards set forth in paragraphs (a) through (d) of
16 Section 8-2501; is qualified by experience or demonstrated
17 competence in the subject of the case; that the reviewing
18 health professional has determined in a written report,
19 after a review of the medical record and other relevant
20 material involved in the particular action that there is a
21 reasonable and meritorious cause for the filing of such
22 action; and that the affiant has concluded on the basis of
23 the reviewing health professional's review and
24 consultation that there is a reasonable and meritorious
25 cause for filing of such action. A single written report
26 must be filed to cover each defendant in the action. As to

1 defendants who are individuals, the ~~If the affidavit is~~
2 ~~filed as to a defendant who is a physician licensed to~~
3 ~~treat human ailments without the use of drugs or medicines~~
4 ~~and without operative surgery, a dentist, a podiatrist, a~~
5 ~~psychologist, or a naprapath,~~ the written report must be
6 from a health professional licensed in the same profession,
7 with the same class of license, as the defendant. For
8 written reports ~~affidavits~~ filed as to all other defendants
9 who are not individuals, the written report must be from a
10 physician licensed to practice medicine in all its branches
11 who is qualified by experience with the standard of care,
12 methods, procedures and treatments relevant to the
13 allegations at issue in the case. In either event, the
14 written report ~~affidavit~~ must identify the profession of
15 the reviewing health professional. A copy of the written
16 report, clearly identifying the plaintiff and the reasons
17 for the reviewing health professional's determination that
18 a reasonable and meritorious cause for the filing of the
19 action exists, including the reviewing health care
20 professional's name, address, current license number, and
21 state of licensure, must be attached to the affidavit, ~~but~~
22 ~~information which would identify the reviewing health~~
23 ~~professional may be deleted from the copy so attached.~~
24 Information regarding the preparation of a written report
25 by the reviewing health professional shall not be used to
26 discriminate against that professional in the issuance of

1 medical liability insurance or in the setting of that
2 professional's medical liability insurance premium. No
3 professional organization may discriminate against a
4 reviewing health professional on the basis that the
5 reviewing health professional has prepared a written
6 report.

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

21 3. That a request has been made by the plaintiff or his
22 attorney for examination and copying of records pursuant to
23 Part 20 of Article VIII of this Code and the party required
24 to comply under those Sections has failed to produce such
25 records within 60 days of the receipt of the request. If an
26 affidavit is executed pursuant to this paragraph, the

1 affidavit ~~certificate~~ and written report required by
2 paragraph 1 shall be filed within 90 days following receipt
3 of the requested records. All defendants except those whose
4 failure to comply with Part 20 of Article VIII of this Code
5 is the basis for an affidavit under this paragraph shall be
6 excused from answering or otherwise pleading until 30 days
7 after being served with the affidavit and report
8 ~~certificate~~ required by paragraph 1.

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

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

21 (d) When the attorney intends to rely on the doctrine of
22 failure to inform of the consequences of the procedure, the
23 attorney shall certify upon the filing of the complaint that
24 the reviewing health professional has, after reviewing the
25 medical record and other relevant materials involved in the
26 particular action, concluded that a reasonable health

1 professional would have informed the patient of the
2 consequences of the procedure.

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

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

21 (g) The failure of the plaintiff to file an affidavit and
22 report in compliance with ~~to file a certificate required by~~
23 this Section shall be grounds for dismissal under Section
24 2-619.

25 (h) (Blank).

26 (i) (Blank).

1 (j) The changes to this Section made by this amendatory Act
2 of the 98th General Assembly apply to causes of action accruing
3 on or after August 25, 2005.

4 (Source: P.A. 97-1145, eff. 1-18-13.)

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

6 Sec. 2-1303. Interest on judgment.

7 (a) Judgments recovered in any court shall draw interest at
8 the rate that is equal to the rate at issuance on the 10-year
9 United States Treasury Notes most recently issued prior to ~~of~~
10 ~~9% per annum from~~ the date of the judgment until satisfied or
11 1% ~~6%~~ per annum when the judgment debtor is a unit of local
12 government, as defined in Section 1 of Article VII of the
13 Constitution, a school district, a community college district,
14 or any other governmental entity. When judgment is entered upon
15 any award, report or verdict, interest shall be computed at the
16 above rate, from the time when made or rendered to the time of
17 entering judgment upon the same, and included in the judgment,
18 except as provided in subsection (b) of this Section. Interest
19 shall be computed and charged only on the unsatisfied portion
20 of the judgment as it exists from time to time. The judgment
21 debtor may by tender of payment of judgment, costs and interest
22 accrued to the date of tender, stop the further accrual of
23 interest on such judgment notwithstanding the prosecution of an
24 appeal, or other steps to reverse, vacate or modify the
25 judgment.

1 (b) In cases where a federal Medicare lien may exist
2 against the judgment, this statutory interest shall be computed
3 from the day after the federal Medicare program provides
4 confirmation of any lien against the judgment.

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

6 (735 ILCS 5/2-1704.6 new)

7 Sec. 2-1704.6. Guaranteed payment of future medical
8 expenses and costs of life care.

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

15 (b) In all cases in which a defendant in a medical
16 malpractice action is found liable for the plaintiff's future
17 medical expenses and costs of care, the trier of fact shall
18 make the following findings based on evidence presented at
19 trial:

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

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

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

1 Based upon evidence presented at trial, the trier of fact
2 may also vary the amount of future costs under this Section
3 from year to year to account for different annual expenditures,
4 including the immediate medical and life care needs of the
5 plaintiff. The jury shall not be informed of an election to pay
6 for future medical expenses and costs of life care by
7 purchasing an annuity.

8 (c) When an election is made to pay for future medical
9 expenses and costs of life care by purchasing an annuity, the
10 court shall enter a judgment ordering that the defendant pay
11 the plaintiff an amount equal to 20% of the present cash value
12 of future medical expenses and cost of life care determined
13 under subsection (b) (1) of this Section and ordering that the
14 remaining future expenses and costs be paid by the purchase of
15 an annuity by or on behalf of the defendant from a company that
16 has itself, or is irrevocably supported financially by a
17 company that has, at least 2 of the following 4 ratings: "A+ X"
18 or higher from A.M. Best Company; "AA-" or higher from Standard
19 & Poor's; "Aa3" or higher from Moody's; and "AA-" or higher
20 from Fitch. The annuity must guarantee that the plaintiff will
21 receive annual payments equal to 80% of the amount determined
22 in subsection (b) (2) inflated by the rate determined in
23 subsection (b) (3) for the life of the plaintiff.

24 (d) If the company providing the annuity becomes unable to
25 pay amounts required by the annuity, the defendant shall secure
26 a replacement annuity for the remainder of the plaintiff's life

1 from a company that satisfies the requirements of subsection
2 (c).

3 (e) A plaintiff receiving future payments by means of an
4 annuity under this Section may seek leave of court to assign or
5 otherwise transfer the right to receive such payments in
6 exchange for a negotiated lump sum value of the remaining
7 future payments or any portion of the remaining future payments
8 under the annuity to address an unanticipated financial
9 hardship under such terms as approved by the court.

10 (f) This Section applies to all causes of action accruing
11 on or after August 25, 2005.

12 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

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

14 (a) The providing of, or payment for, medical, surgical,
15 hospital, or rehabilitation services, facilities, or equipment
16 by or on behalf of any person, or the offer to provide, or pay
17 for, any one or more of the foregoing, shall not be construed
18 as an admission of any liability by such person or persons.
19 Testimony, writings, records, reports or information with
20 respect to the foregoing shall not be admissible in evidence as
21 an admission of any liability in any action of any kind in any
22 court or before any commission, administrative agency, or other
23 tribunal in this State, except at the instance of the person or
24 persons so making any such provision, payment or offer.

25 (b) Any expression of grief, apology, or explanation

1 provided by a health care provider, including, but not limited
2 to, a statement that the health care provider is "sorry" for
3 the outcome to a patient, the patient's family, or the
4 patient's legal representative about an inadequate or
5 unanticipated treatment or care outcome that is provided within
6 72 hours of when the provider knew or should have known of the
7 potential cause of such outcome shall not be admissible as
8 evidence in any action of any kind in any court or before any
9 tribunal, board, agency, or person. The disclosure of any such
10 information, whether proper, or improper, shall not waive or
11 have any effect upon its confidentiality or inadmissibility. As
12 used in this Section, a "health care provider" is any hospital,
13 nursing home or other facility, or employee or agent thereof, a
14 physician, or other licensed health care professional. Nothing
15 in this Section precludes the discovery or admissibility of any
16 other facts regarding the patient's treatment or outcome as
17 otherwise permitted by law.

18 (c) The changes to this Section made by this amendatory Act
19 of the 98th General Assembly apply to causes of action accruing
20 on or after August 25, 2005.

21 (Source: P.A. 97-1145, eff. 1-18-13.)

22 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

23 Sec. 8-2501. Expert Witness Standards. In any case in which
24 the standard of care applicable to ~~given by~~ a medical
25 professional ~~profession~~ is at issue, the court shall apply the

1 following standards to determine if a witness qualifies as an
2 expert witness and can testify on the issue of the appropriate
3 standard of care.

4 (a) Whether the witness is board certified or board
5 eligible, or has completed a residency, in the same or
6 substantially similar medical specialties as the defendant and
7 is otherwise qualified by significant experience with the
8 standard of care, methods, procedures, and treatments relevant
9 to the allegations against the defendant ~~Relationship of the~~
10 ~~medical specialties of the witness to the medical problem or~~
11 ~~problems and the type of treatment administered in the case;~~

12 (b) Whether the witness has devoted a majority ~~substantial~~
13 ~~portion~~ of his or her work time to the practice of medicine,
14 teaching or University based research in relation to the
15 medical care and type of treatment at issue which gave rise to
16 the medical problem of which the plaintiff complains;

17 (c) Whether the witness is licensed in the same profession
18 with the same class of license as the defendant if the
19 defendant is an individual; and

20 (d) Whether, in the case against a nonspecialist, the
21 witness can demonstrate a sufficient familiarity with the
22 standard of care practiced in this State.

23 An expert shall provide evidence of active practice,
24 teaching, or engaging in university-based research. If
25 retired, an expert must provide evidence of attendance and
26 completion of continuing education courses for 3 years previous

1 to giving testimony. An expert who has not actively practiced,
2 taught, or been engaged in university-based research, or any
3 combination thereof, during the preceding 5 years may not be
4 qualified as an expert witness.

5 The changes to this Section made by this amendatory Act of
6 the 98th General Assembly apply to causes of action accruing on
7 or after August 25, 2005.

8 (Source: P.A. 97-1145, eff. 1-18-13.)

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

11 (745 ILCS 49/30)

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

14 (a) A person licensed under the Medical Practice Act of
15 1987, a person licensed to practice the treatment of human
16 ailments in any other state or territory of the United States,
17 or a health care professional, including but not limited to an
18 advanced practice nurse, retired physician, physician
19 assistant, nurse, pharmacist, physical therapist, podiatrist,
20 or social worker licensed in this State or any other state or
21 territory of the United States, who, in good faith, provides
22 medical treatment, diagnosis, or advice as a part of the
23 services of an established free medical clinic providing care,
24 including but not limited to home visits, without charge to

1 patients which is limited to care that does not require the
2 services of a licensed hospital or ambulatory surgical
3 treatment center and who receives no fee or compensation from
4 that source shall not be liable for civil damages as a result
5 of his or her acts or omissions in providing that medical
6 treatment, except for willful or wanton misconduct.

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

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

15 (d) The immunity from civil damages provided under
16 subsection (a) also applies to physicians, retired physicians,
17 hospitals, and other health care providers that provide further
18 medical treatment, diagnosis, or advice, including but not
19 limited to hospitalization, office visits, and home visits, to
20 a patient upon referral from an established free medical clinic
21 without fee or compensation.

22 (d-5) A free medical clinic may receive reimbursement from
23 the Illinois Department of Public Aid, provided any
24 reimbursements shall be used only to pay overhead expenses of
25 operating the free medical clinic and may not be used, in whole
26 or in part, to provide a fee or other compensation to any

1 person licensed under the Medical Practice Act of 1987 or any
2 other health care professional who is receiving an exemption
3 under this Section. Any health care professional receiving an
4 exemption under this Section may not receive any fee or other
5 compensation in connection with any services provided to, or
6 any ownership interest in, the clinic. Medical care shall not
7 include an overnight stay in a health care facility.

8 (e) Nothing in this Section prohibits a free medical clinic
9 from accepting voluntary contributions for medical services
10 provided to a patient who has acknowledged his or her ability
11 and willingness to pay a portion of the value of the medical
12 services provided.

13 (f) Any voluntary contribution collected for providing
14 care at a free medical clinic shall be used only to pay
15 overhead expenses of operating the clinic. No portion of any
16 moneys collected shall be used to provide a fee or other
17 compensation to any person licensed under Medical Practice Act
18 of 1987.

19 (g) The changes to this Section made by Public Act 94-677
20 and reenacted by this amendatory Act of the 98th 94th General
21 Assembly apply to causes of action accruing on or after August
22 25, 2005, as those changes may be amended from time to time ~~its~~
23 effective date.

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

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.