



## 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20 and 8-2501 and repealed Section 1704.5 of the Code of Civil  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.