

By: Representative Perry

To: Judiciary A

HOUSE BILL NO. 778
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 11-46-11, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY NOTICE OF CLAIM REQUIREMENTS UNDER THE TORT CLAIMS ACT;
3 AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 11-46-11, Mississippi Code of 1972, is
6 amended as follows:

7 11-46-11. (1) After all procedures within a governmental
8 entity have been exhausted, any person having a claim for injury
9 arising under the provisions of this chapter against a
10 governmental entity or its employee shall proceed as he might in
11 any action at law or in equity; provided, however, that ninety
12 (90) days prior to maintaining an action thereon, such person
13 shall file a notice of claim with the chief executive officer of
14 the governmental entity. Service of notice of claim may also be
15 had in the following manner: If the governmental entity is a
16 county, then upon the chancery clerk of the county sued; if the
17 governmental entity is a municipality, then upon the city clerk.
18 If the governmental entity to be sued is a state entity as defined
19 in Section 11-46-1(j), service of notice of claim shall be had
20 only upon that entity's chief executive officer. If the
21 governmental entity is participating in a plan administered by the
22 board pursuant to Section 11-46-7(3), such chief executive officer
23 shall notify the board of any claims filed within five (5) days
24 after the receipt thereof.

25 (2) Every notice of claim required by subsection (1) of this
26 section shall be in writing, and shall be delivered in person or

27 by registered or certified United States mail. Every notice of
28 claim shall contain a short and plain statement of the facts upon
29 which the claim is based, including the circumstances which
30 brought about the injury, the extent of the injury, the time and
31 place the injury occurred, the names of all persons known to be
32 involved, the amount of money damages sought and the residence of
33 the person making the claim at the time of the injury and at the
34 time of filing the notice.

35 (3) All actions brought under the provisions of this chapter
36 shall be commenced within one (1) year next after the date of the
37 tortious, wrongful or otherwise actionable conduct on which the
38 liability phase of the action is based, and not after; provided,
39 however, that the filing of a notice of claim as required by
40 subsection (1) of this section shall serve to toll the statute of
41 limitations for a period of ninety-five (95) days from the date
42 the chief executive officer of the state agency receives the
43 notice of claim, or for one hundred twenty (120) days from the
44 date the chief executive officer or other statutorily designated
45 official of a municipality, county or other political subdivision
46 receives the notice of claim, during which time no action may be
47 maintained by the claimant unless the claimant has received a
48 notice of denial of claim. After the tolling period has expired,
49 the claimant shall then have an additional ninety (90) days to
50 file any action against the governmental entity served with proper
51 claim notice. However, should the governmental entity deny any
52 such claim, then the additional ninety (90) days during which the
53 claimant may file an action shall begin to run upon the claimant's
54 receipt of notice of denial of claim from the governmental entity.
55 All notices of denial of claim shall be served by governmental
56 entities upon claimants by certified mail, return receipt
57 requested, only. For purposes of determining the running of
58 limitations periods under this chapter, service of any notice of
59 claim or denial of notice of claim shall be effective upon
60 delivery by the methods statutorily designated in this chapter.
61 The limitations period provided herein shall control and shall be
62 exclusive in all actions subject to and brought under the
63 provisions of this chapter, notwithstanding the nature of the

64 claim, the label or other characterization the claimant may use to
65 describe it, or the provisions of any other statute of limitations
66 which would otherwise govern the type of claim or legal theory if
67 it were not subject to or brought under the provisions of this
68 chapter.

69 SECTION 2. This act shall take effect and be in force from
70 and after its passage.