

By: Walls

To: Judiciary

SENATE BILL NO. 2974
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 11-46-11, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE A SAVINGS CLAUSE IN FAVOR OF INFANTS AND THOSE OF
3 UNSOUND MIND TO APPLY TO THE STATE'S WAIVER OF IMMUNITY; AND FOR
4 RELATED PURPOSES.

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

6 SECTION 1. Section 11-46-11, Mississippi Code of 1972, is
7 amended as follows:[CSQ1]

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

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

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

36 (3) All actions brought under the provisions of this chapter
37 shall be commenced within one (1) year next after the date of the
38 tortious, wrongful or otherwise actionable conduct on which the
39 liability phase of the action is based, and not after; provided,
40 however, that the filing of a notice of claim as required by
41 subsection (1) of this section shall serve to toll the statute of
42 limitations for a period of ninety-five (95) days from the date
43 the chief executive officer of the state agency receives the
44 notice of claim, or for one hundred twenty (120) days from the
45 date the chief executive officer or other statutorily designated
46 official of a municipality, county or other political subdivision
47 receives the notice of claim, during which time no action may be
48 maintained by the claimant unless the claimant has received a
49 notice of denial of claim. After the tolling period has expired,
50 the claimant shall then have an additional ninety (90) days to
51 file any action against the governmental entity served with proper
52 claim notice. However, should the governmental entity deny any
53 such claim, then the additional ninety (90) days during which the
54 claimant may file an action shall begin to run upon the claimant's
55 receipt of notice of denial of claim from the governmental entity.

56 All notices of denial of claim shall be served by governmental
57 entities upon claimants by certified mail, return receipt
58 requested, only. For purposes of determining the running of
59 limitations periods under this chapter, service of any notice of
60 claim or notice of denial of claim shall be effective upon
61 delivery by the methods statutorily designated in this chapter.
62 The limitations period provided herein shall control and shall be
63 exclusive in all actions subject to and brought under the
64 provisions of this chapter, notwithstanding the nature of the

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

70 (4) From and after May 15, 2000, if any person entitled to
71 bring any action under this chapter shall, at the time at which
72 the cause of action accrued, be under the disability of infancy or
73 unsoundness of mind, he may bring the action within the time
74 allowed in this section after his disability shall be removed as
75 provided by law. The savings in favor of persons under disability
76 of unsoundness of mind shall never extend longer than twenty-one
77 (21) years.

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