

By: Senator(s) Chaney

To: Judiciary

SENATE BILL NO. 3051

1 AN ACT TO AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE DEFINITIONS UNDER THE TORT CLAIMS ACT; TO AMEND SECTION
3 11-46-15, MISSISSIPPI CODE OF 1972, TO CAP DAMAGES FROM MEDICAL
4 MALPRACTICE AND WRONGFUL DEATH CLAIMS FILED AGAINST HEALTH CARE
5 PROVIDERS RENDERING CARE TO MEDICAID RECIPIENTS; AND FOR RELATED
6 PURPOSES.

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

8 **SECTION 1.** Section 11-46-1, Mississippi Code of 1972, is
9 amended as follows:

10 11-46-1. As used in this chapter the following terms shall
11 have the meanings herein ascribed unless the context otherwise
12 requires:

13 (a) "Claim" means any demand to recover damages from a
14 governmental entity as compensation for injuries.

15 (b) "Claimant" means any person seeking compensation
16 under the provisions of this chapter, whether by administrative
17 remedy or through the courts.

18 (c) "Board" means the Mississippi Tort Claims Board.

19 (d) "Department" means the Department of Finance and
20 Administration.

21 (e) "Director" means the executive director of the
22 department who is also the executive director of the board.

23 (f) "Employee" means any officer, employee or servant
24 of the State of Mississippi or a political subdivision of the
25 state, including elected or appointed officials and persons acting
26 on behalf of the state or a political subdivision in any official
27 capacity, temporarily or permanently, in the service of the state
28 or a political subdivision whether with or without compensation.

29 The term "employee" shall not mean a person or other legal entity



30 while acting in the capacity of an independent contractor under
31 contract to the state or a political subdivision; provided,
32 however, that for purposes of the limits of liability provided for
33 in Section 11-46-15, the term "employee" shall include physicians
34 under contract to provide health services with the State Board of
35 Health, the State Board of Mental Health or any county or
36 municipal jail facility while rendering services under such
37 contract. The term "employee" shall also include health care
38 providers while rendering services to a patient who is eligible
39 for health care services under the provisions of Title 43, Chapter
40 13, Article 3, Mississippi Code of 1972. The term "employee"
41 shall also include Mississippi Department of Human Services
42 licensed foster parents for the limited purposes of coverage under
43 the Tort Claims Act as provided in Section 11-46-8.

44 (g) "Governmental entity" means and includes the state
45 and political subdivisions as herein defined.

46 (h) "Health care provider" means a physician, dentist,
47 nurse, pharmacist, podiatrist, optometrist, chiropractor or
48 employee of any such individual or facility licensed, certified or
49 otherwise authorized or permitted by law to provide health care in
50 the ordinary course of business or practice of a profession or any
51 employee of such other individual or facility.

52 (i) "Injury" means death, injury to a person, damage to
53 or loss of property or any other injury that a person may suffer
54 that is actionable at law or in equity.

55 (j) "Political subdivision" means any body politic or
56 body corporate other than the state responsible for governmental
57 activities only in geographic areas smaller than that of the
58 state, including but not limited to any county, municipality,
59 school district, community hospital as defined in Section
60 41-13-10, Mississippi Code of 1972, airport authority or other
61 instrumentality thereof, whether or not such body or



62 instrumentality thereof has the authority to levy taxes or to sue
63 or be sued in its own name.

64 (k) "State" means the State of Mississippi and any
65 office, department, agency, division, bureau, commission, board,
66 institution, hospital, college, university, airport authority or
67 other instrumentality thereof, whether or not such body or
68 instrumentality thereof has the authority to levy taxes or to sue
69 or be sued in its own name.

70 (l) "Law" means all species of law including but not
71 limited to any and all constitutions, statutes, case law, common
72 law, customary law, court order, court rule, court decision, court
73 opinion, court judgment or mandate, administrative rule or
74 regulation, executive order, or principle or rule of equity.

75 **SECTION 2.** Section 11-46-15, Mississippi Code of 1972, is
76 amended as follows:

77 11-46-15. (1) In any claim or suit for damages against a
78 governmental entity or its employee brought under the provisions
79 of this chapter, the liability shall not exceed the following for
80 all claims arising out of a single occurrence for all damages
81 permitted under this chapter:

82 (a) For claims or causes of action arising from acts or
83 omissions occurring on or after July 1, 1993, but before July 1,
84 1997, the sum of Fifty Thousand Dollars (\$50,000.00);

85 (b) For claims or causes of action arising from acts or
86 omissions occurring on or after July 1, 1997, but before July 1,
87 2001, the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00);

88 (c) For claims or causes of action arising from acts or
89 omissions occurring on or after July 1, 2001, the sum of Five
90 Hundred Thousand Dollars (\$500,000.00); provided, however, for
91 claims or causes of action arising from acts or omissions of an
92 employee rendering health care to a Medicaid recipient on or after
93 July 1, 2002, for which medical malpractice or wrongful death is



94 claimed, the sum of Two Hundred Fifty Thousand Dollars
95 (\$250,000.00).

96 (2) No judgment against a governmental entity or its
97 employee for any act or omission for which immunity is waived
98 under this chapter shall include an award for exemplary or
99 punitive damages or for interest prior to judgment, or an award of
100 attorney's fees unless attorney's fees are specifically authorized
101 by law.

102 (3) Except as otherwise provided in Section 11-46-17(4), in
103 any suit brought under the provisions of this chapter, if the
104 verdict which is returned, when added to costs and any attorney's
105 fees authorized by law, would exceed the maximum dollar amount of
106 liability provided in subsection (1) of this section, the court
107 shall reduce the verdict accordingly and enter judgment in an
108 amount not to exceed the maximum dollar amount of liability
109 provided in subsection (1) of this section.

110 **SECTION 3.** This act shall take effect and be in force from
111 and after July 1, 2002.

