To: Judiciary

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002

By: Senator(s) Chaney
To: Judiciary

SENATE BILL NO. 3051

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

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

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

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

(a) "Claim" means any demand to recover damages from a governmental entity as compensation for injuries.
(b) "Claimant" means any person seeking compensation under the provisions of this chapter, whether by administrative remedy or through the courts.
(c) "Board" means the Mississippi Tort Claims Board.
(d) "Department" means the Department of Finance and Administration.
(e) "Director" means the executive director of the department who is also the executive director of the board.
(f) "Employee" means any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation.

The term "employee" shall not mean a person or other legal entity...
while acting in the capacity of an independent contractor under contract to the state or a political subdivision; provided, however, that for purposes of the limits of liability provided for in Section 11-46-15, the term "employee" shall include physicians under contract to provide health services with the State Board of Health, the State Board of Mental Health or any county or municipal jail facility while rendering services under such contract. The term "employee" shall also include health care providers while rendering services to a patient who is eligible for health care services under the provisions of Title 43, Chapter 13, Article 3, Mississippi Code of 1972. The term "employee" shall also include Mississippi Department of Human Services licensed foster parents for the limited purposes of coverage under the Tort Claims Act as provided in Section 11-46-8.

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

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

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

(j) "Political subdivision" means any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including but not limited to any county, municipality, school district, community hospital as defined in Section 41-13-10, Mississippi Code of 1972, airport authority or other instrumentality thereof, whether or not such body or
instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

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

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

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

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

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

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

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

($250,000.00).

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

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

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