

By: Senator(s) Fillingane

To: Judiciary, Division A

SENATE BILL NO. 2008

1 AN ACT TO AMEND SECTIONS 11-46-11 AND 15-1-36, MISSISSIPPI  
2 CODE OF 1972, TO CLARIFY THE SUBSTANTIVE NATURE OF THE NOTICE  
3 REQUIREMENTS FOR A PERSON MAKING A CLAIM UNDER THE TORT CLAIMS ACT  
4 OR FOR A PERSON PURSUING A MEDICAL MALPRACTICE CLAIM; AND FOR  
5 RELATED PURPOSES.

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

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

9 11-46-11. (1) After all procedures within a governmental  
10 entity have been exhausted, any person having a claim for injury  
11 arising under the provisions of this chapter against a  
12 governmental entity or its employee shall proceed only after  
13 strictly complying with the following mandatory requirements, upon  
14 which the waiver of immunity provided by Section 11-46-5(1) and  
15 the jurisdiction of the circuit courts of this state to preside  
16 over the subject matter of any claim brought pursuant to this  
17 chapter are both contingent:

18 (a) \* \* \* In order to have standing to institute suit,  
19 ninety (90) days before commencing an action as contemplated under  
20 this chapter, the claimant shall file a notice of claim with the  
21 chief executive officer of the governmental entity. Service of  
22 notice of claim may also be had in the following manner: If the  
23 governmental entity is a county, then upon the chancery clerk of  
24 the county sued; if the governmental entity is a municipality,  
25 then upon the city clerk. If the governmental entity to be sued  
26 is a state entity as defined in Section 11-46-1(j), service of  
27 notice of claim shall be had only upon that entity's chief  
28 executive officer. If the governmental entity is participating in



29 a plan administered by the board pursuant to Section 11-46-7(3),  
30 such chief executive officer shall notify the board of any claims  
31 filed within five (5) days after the receipt thereof.

32 (b) The provisions of this subsection (1) are  
33 jurisdictional in nature. Any action commenced without complete  
34 compliance with each and every one of the provisions of this  
35 section shall not be duly filed and shall not toll, arrest, alter  
36 or amend any applicable limitations period.

37 (2) Every notice of claim required by subsection (1) of this  
38 section shall be in writing, and shall be delivered in person or  
39 by registered or certified United States mail. Every notice of  
40 claim shall contain a short and plain statement of the facts upon  
41 which the claim is based, including the circumstances which  
42 brought about the injury, the extent of the injury, the time and  
43 place the injury occurred, the names of all persons known to be  
44 involved, the amount of money damages sought and the residence of  
45 the person making the claim at the time of the injury and at the  
46 time of filing the notice.

47 (3) All actions brought under the provisions of this chapter  
48 shall be commenced within one (1) year next after the date of  
49 the \* \* \* conduct on which the liability phase of the action is  
50 based without regard to the date on which the claim was first  
51 discoverable or discovered, except as otherwise provided in  
52 Section 15-1-36, and not after; provided, however, that the filing  
53 of a notice of claim as required by subsection (1) of this section  
54 shall serve to toll the statute of limitations for a period of  
55 ninety (90) days from the date the chief executive officer or  
56 other statutorily designated official of the state agency \* \* \* or  
57 municipality, county or other political subdivision receives the  
58 notice of claim, during which time no action may be maintained by  
59 the claimant unless the claimant has received a notice of denial  
60 of claim. After the tolling period has expired, the claimant  
61 shall then have an additional ninety-day filing period to commence



62 any action against the governmental entity served with proper  
63 claim notice. The ninety-day filing period shall run concurrently  
64 with the one (1) year limitations period provided in this section,  
65 as tolled by the receipt of a notice of claim. The filing period  
66 shall only extend the time in which suit may be commenced beyond  
67 the one (1) year limitations period, as tolled by the receipt of a  
68 notice of claim, by the number of unexpired days remaining of the  
69 ninety-day filing period as of the date the one (1) year  
70 limitations period expires. However, should the governmental  
71 entity deny any such claim, then the ninety-day tolling period  
72 shall end, and the additional ninety-day filing period during  
73 which the claimant may commence an action shall begin to run upon  
74 the claimant's receipt of notice of denial of claim from the  
75 governmental entity. All notices of denial of claim shall be  
76 served by governmental entities upon claimants by certified mail,  
77 return receipt requested, only. For purposes of determining the  
78 running of limitations periods under this chapter, service of any  
79 notice of claim or notice of denial of claim shall be effective  
80 upon delivery by the methods statutorily designated in this  
81 chapter. The limitations period provided herein shall control and  
82 shall be exclusive in all actions subject to and brought under the  
83 provisions of this chapter, notwithstanding the nature of the  
84 claim, the label or other characterization the claimant may use to  
85 describe it, or the provisions of any other statute of limitations  
86 which would otherwise govern the type of claim or legal theory if  
87 it were not subject to or brought under the provisions of this  
88 chapter.

89 (4) From and after April 1, 1993, if any person entitled to  
90 bring any action under this chapter shall, at the time at which  
91 the cause of action accrued, be under the disability of infancy or  
92 unsoundness of mind, he may bring the action within the time  
93 allowed in this section after his disability shall be removed as  
94 provided by law. The savings in favor of persons under disability



95 of unsoundness of mind shall never extend longer than twenty-one  
96 (21) years.

97 (5) The defenses and notice provisions contained in this  
98 chapter shall be substantive rights that may be asserted at any  
99 time before final judgment is entered in the trial court.

100 **SECTION 2.** Section 15-1-36, Mississippi Code of 1972, is  
101 amended as follows:

102 15-1-36. (1) For any claim accruing on or before June 30,  
103 1998, and except as otherwise provided in this section, no claim  
104 in tort may be brought against a licensed physician, osteopath,  
105 dentist, hospital, institution for the aged or infirm, nurse,  
106 pharmacist, podiatrist, optometrist or chiropractor for injuries  
107 or wrongful death arising out of the course of medical, surgical  
108 or other professional services unless it is filed within two (2)  
109 years from the date the alleged act, omission or neglect shall or  
110 with reasonable diligence might have been first known or  
111 discovered.

112 (2) For any claim accruing on or after July 1, 1998, and  
113 except as otherwise provided in this section, no claim in tort may  
114 be brought against a licensed physician, osteopath, dentist,  
115 hospital, institution for the aged or infirm, nurse, pharmacist,  
116 podiatrist, optometrist or chiropractor for injuries or wrongful  
117 death arising out of the course of medical, surgical or other  
118 professional services unless it is filed within two (2) years from  
119 the date the alleged act, omission or neglect shall or with  
120 reasonable diligence might have been first known or discovered,  
121 and, except as described in paragraphs (a) and (b) of this  
122 subsection, in no event more than seven (7) years after the  
123 alleged act, omission or neglect occurred:

124 (a) If a foreign object introduced during a surgical or  
125 medical procedure has been left in a patient's body, the cause of  
126 action shall be deemed to have first accrued at, and not before,  
127 the time at which the foreign object is, or with reasonable



128 diligence should have been, first known or discovered to be in the  
129 patient's body.

130 (b) If the cause of action shall have been fraudulently  
131 concealed from the knowledge of the person entitled thereto, the  
132 cause of action shall be deemed to have first accrued at, and not  
133 before, the time at which such fraud shall be, or with reasonable  
134 diligence should have been, first known or discovered.

135 (3) Except as otherwise provided in subsection (4) of this  
136 section, if at the time at which the cause of action shall or with  
137 reasonable diligence might have been first known or discovered,  
138 the person to whom such claim has accrued shall be six (6) years  
139 of age or younger, then such minor or the person claiming through  
140 such minor may, notwithstanding that the period of time limited  
141 pursuant to subsections (1) and (2) of this section shall have  
142 expired, commence action on such claim at any time within two (2)  
143 years next after the time at which the minor shall have reached  
144 his sixth birthday, or shall have died, whichever shall have first  
145 occurred.

146 (4) If at the time at which the cause of action shall or  
147 with reasonable diligence might have been first known or  
148 discovered, the person to whom such claim has accrued shall be a  
149 minor without a parent or legal guardian, then such minor or the  
150 person claiming through such minor may, notwithstanding that the  
151 period of time limited pursuant to subsections (1) and (2) of this  
152 section shall have expired, commence action on such claim at any  
153 time within two (2) years next after the time at which the minor  
154 shall have a parent or legal guardian or shall have died,  
155 whichever shall have first occurred; provided, however, that in no  
156 event shall the period of limitation begin to run prior to such  
157 minor's sixth birthday unless such minor shall have died.

158 (5) If at the time at which the cause of action shall or  
159 with reasonable diligence might have been first known or  
160 discovered, the person to whom such claim has accrued shall be



161 under the disability of unsoundness of mind, then such person or  
162 the person claiming through him may, notwithstanding that the  
163 period of time hereinbefore limited shall have expired, commence  
164 action on such claim at any time within two (2) years next after  
165 the time at which the person to whom the right shall have first  
166 accrued shall have ceased to be under the disability, or shall  
167 have died, whichever shall have first occurred.

168 (6) When any person who shall be under the disabilities  
169 mentioned in subsections (3), (4) and (5) of this section at the  
170 time at which his right shall have first accrued, shall depart  
171 this life without having ceased to be under such disability, no  
172 time shall be allowed by reason of the disability of such person  
173 to commence action on the claim of such person beyond the period  
174 prescribed under Section 15-1-55, Mississippi Code of 1972.

175 (7) For the purposes of subsection (3) of this section, and  
176 only for the purposes of such subsection, the disability of  
177 infancy or minority shall be removed from and after a person has  
178 reached his sixth birthday.

179 (8) For the purposes of subsection (4) of this section, and  
180 only for the purposes of such subsection, the disability of  
181 infancy or minority shall be removed from and after a person has  
182 reached his sixth birthday or from and after such person shall  
183 have a parent or legal guardian, whichever occurs later, unless  
184 such disability is otherwise removed by law.

185 (9) The limitation established by this section as to a  
186 licensed physician, osteopath, dentist, hospital or nurse shall  
187 apply only to actions the cause of which accrued on or after July  
188 1, 1976.

189 (10) The limitation established by this section as to  
190 pharmacists shall apply only to actions the cause of which accrued  
191 on or after July 1, 1978.



192           (11) The limitation established by this section as to  
193 podiatrists shall apply only to actions the cause of which accrued  
194 on or after July 1, 1979.

195           (12) The limitation established by this section as to  
196 optometrists and chiropractors shall apply only to actions the  
197 cause of which accrued on or after July 1, 1983.

198           (13) The limitation established by this section as to  
199 actions commenced on behalf of minors shall apply only to actions  
200 the cause of which accrued on or after July 1, 1989.

201           (14) The limitation established by this section as to  
202 institutions for the aged or infirm shall apply only to actions  
203 the cause of which occurred on or after January 1, 2003.

204           (15) No action based upon the health care provider's  
205 professional negligence may be commenced unless a certification of  
206 consultation, if required under Section 11-5-58, accompanies the  
207 complaint and the defendant has received at least sixty (60) days'  
208 prior written notice of the intention to sue; no person shall  
209 otherwise have standing to sue and any action commenced without  
210 compliance with this notice requirement shall not be allowed by  
211 the court to proceed. No particular form of notice is required,  
212 but it shall notify the defendant of the legal basis of the claim,  
213 including the acts at issue, the type of loss sustained, and the  
214 specific nature of the injuries suffered. If \* \* \* notice is  
215 provided, the applicable statute of limitations \* \* \* shall be  
216 extended sixty (60) days \* \* \*. The provisions of this section  
217 are jurisdictional in nature. Any action commenced without  
218 complete compliance with each and every one of the provisions of  
219 this section shall not be duly filed and shall not toll, arrest,  
220 alter or amend any applicable limitations period.

221           (16) The defenses and notice provisions contained in this  
222 section shall be substantive rights that may be asserted at any  
223 time before final judgment is entered in the trial court.



224           **SECTION 3.** This act shall take effect and be in force from  
225 and after its passage, and shall apply to all pending actions in  
226 which judgment has not been entered on the effective date of the  
227 act and to all actions filed on or after the effective date of the  
228 act.

