

By: Representative Tullos

To: Judiciary A

HOUSE BILL NO. 146

1 AN ACT TO AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO
2 EXCLUDE CERTAIN EMPLOYEES WHO ARE NOT REGISTERED WITH THE TORT
3 CLAIMS BOARD; TO AMEND SECTION 11-46-5, MISSISSIPPI CODE OF 1972,
4 TO PROVIDE EXCEPTIONS TO THE DEFINITION OF COVERED EMPLOYEES UNDER
5 THE TORT CLAIMS ACT; TO AMEND SECTION 11-46-11, MISSISSIPPI CODE
6 OF 1972, TO REVISE THE STATUTE OF LIMITATIONS TO COMMENCE WHEN A
7 PLAINTIFF IS NOTIFIED THAT THE EMPLOYEE IS COVERED BY THE TORT
8 CLAIMS ACT IF THE EMPLOYEE WAS WORKING FOR A NON TORT CLAIMS
9 ENTITY AT THE TIME OF THE TORTIOUS CONDUCT; TO AMEND SECTION
10 11-46-19, MISSISSIPPI CODE OF 1972, TO REQUIRE THE BOARD TO
11 DEVELOP AND MAINTAIN A COMPREHENSIVE LIST OF EMPLOYEES WHO ARE
12 EMPLOYED BY NON TORT CLAIMS ENTITIES; AND FOR RELATED PURPOSES.

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

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

16 11-46-1. As used in this chapter, the following terms shall
17 have the meanings ascribed unless the context otherwise requires:

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

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

23 (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, including firefighters who are members of a volunteer fire department that is a political subdivision. The term "employee" shall not mean (i) a person or other legal entity while acting in the capacity of an independent contractor under contract to the state or a political subdivision or (ii) a person working for an entity that is not covered by this chapter and not registered with the Tort Claims Board; and

(i) For purposes of the limits of liability provided for in Section 11-46-15, the term "employee" shall include:

1. 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 the contract;



48 2. Any physician, dentist or other health
49 care practitioner employed by the University of Mississippi
50 Medical Center (UMMC) and its departmental practice plans who is a
51 faculty member and provides health care services only for patients
52 at UMMC or its affiliated practice sites, including any physician
53 or other health care practitioner employed by UMMC under an
54 arrangement with a public or private health-related organization;

55 3. Any physician, dentist or other health
56 care practitioner employed by any university under the control of
57 the Board of Trustees of State Institutions of Higher Learning who
58 practices only on the campus of any university under the control
59 of the Board of Trustees of State Institutions of Higher Learning;

60 4. Any physician, dentist or other health
61 care practitioner employed by the State Veterans Affairs Board and
62 who provides health care services for patients for the State
63 Veterans Affairs Board;

64 (ii) The term "employee" shall also include
65 Mississippi Department of Child Protection Services licensed
66 foster parents for the limited purposes of coverage under the Tort
67 Claims Act as provided in Section 11-46-8; and

68 (iii) The term "employee" also shall include any
69 employee or member of the governing board of a charter school but
70 shall not include any person or entity acting in the capacity of
71 an independent contractor to provide goods or services under a
72 contract with a charter school.



(g) "Governmental entity" means the state and political subdivisions.

(h) "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.

(i) "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, charter school, volunteer fire department that is a chartered nonprofit corporation providing emergency services under contract with a county or municipality, community hospital as defined in Section 41-13-10, airport authority, or other instrumentality of the state, whether or not the body or instrumentality has the authority to levy taxes or to sue or be sued in its own name.

(j) "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 the body or instrumentality has the authority to levy taxes or to sue or be sued in its own name.

(k) "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 11-46-5, Mississippi Code of 1972, is amended as follows:

11-46-5. (1) Notwithstanding the immunity granted in Section 11-46-3, or the provisions of any other law to the contrary, the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions; provided, however, immunity of a governmental entity in any such case shall be waived only to the extent of the maximum amount of liability provided for in Section 11-46-15.

(2) (a) For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if: (i) the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations; (ii) the tortious wrongful or otherwise actionable conduct occurred while the employee was working for an entity that is not covered by this chapter; or (iii) the employee is employed



by an entity that is not covered by this chapter and such employee did not register with the Tort Claims Board.

(b) Each employee that works for an entity that is not covered under this chapter shall register his or her name, the name and description of the noncovered entity and the address of the noncovered entity before the tortious wrongful or otherwise actionable conduct by the employee occurs. Failure by an employee to register the required information before the tortious wrongful or otherwise actionable conduct occurs shall exclude the person from the protections of this chapter because such person shall not be considered an employee for purposes of this chapter.

(3) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment, except for actions described in subsection (2) of Section 73-25-33 and subsection (5) of this section.

(4) Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

(5) For purposes of this chapter, an employee shall not be considered as acting within the course and scope of his or her employment and a governmental entity shall be liable or be considered to have waived immunity for any conduct of its employee



if the employee's conduct constituted a violation of Title 41,
Chapter 141, Mississippi Code of 1972.

SECTION 3. Section 11-46-11, Mississippi Code of 1972, is
amended as follows:

11-46-11. (1) After all procedures within a governmental
entity have been exhausted, any person having a claim under this
chapter shall proceed as he might in any action at law or in
equity, except that at least ninety (90) days before instituting
suit, the person must file a notice of claim with the chief
executive officer of the governmental entity.

(2) (a) Service of notice of claim shall be made as
follows:

(i) For local governments:

1. If the governmental entity is a county,
then upon the chancery clerk of the county sued;

2. If the governmental entity is a
municipality, then upon the city clerk.

(ii) If the governmental entity to be sued is a
state entity as defined in Section 11-46-1(j), or is a political
subdivision other than a county or municipality, service of notice
of claim shall be had only upon that entity's or political
subdivision's chief executive officer. The chief executive
officer of a governmental entity participating in a plan
administered by the board pursuant to Section 11-46-7(3) shall



171 notify the board of any claims filed within five (5) days after
172 receipt thereof.

173 (b) Every notice of claim shall:

174 (i) Be in writing;

175 (ii) Be delivered in person or by registered or
176 certified United States mail; and

177 (iii) Contain a short and plain statement of the
178 facts upon which the claim is based, including the circumstances
179 which brought about the injury, the extent of the injury, the time
180 and place the injury occurred, the names of all persons known to
181 be involved, the amount of money damages sought, and the residence
182 of the person making the claim at the time of the injury and at
183 the time of filing the notice.

184 (3) (a) All actions brought under this chapter shall be
185 commenced within one (1) year next after the date of the tortious,
186 wrongful or otherwise actionable conduct on which the liability
187 phase of the action is based, and not after, except that: (i)
188 filing a notice of claim within the required one-year period will
189 toll the statute of limitations for ninety-five (95) days from the
190 date the chief executive officer of the state entity or the chief
191 executive officer or other statutorily designated official of a
192 political subdivision receives the notice of claim (ii) upon
193 notification by a defendant that is not covered by this chapter
194 that the tortious wrongful or otherwise actionable conduct was
195 committed by an employee covered under this chapter, the one (1)



196 year shall begin the first day after the plaintiff is notified
197 that the employee is covered under this chapter.

198 (b) No action whatsoever may be maintained by the
199 claimant until the claimant receives a notice of denial of claim
200 or the tolling period expires, whichever comes first, after which
201 the claimant has an additional ninety (90) days to file suit;
202 failure to file within the time allowed is an absolute bar to any
203 further proceedings under this chapter.

204 (c) All notices of denial of claim shall be served by
205 governmental entities upon claimants by certified mail, return
206 receipt requested, only.

207 (d) (i) To determine the running of limitations
208 periods under this chapter, service of any notice of claim or
209 notice of denial of claim is effective upon delivery by the
210 methods statutorily designated in this chapter.

211 (ii) The limitations period provided in this
212 section controls and shall be exclusive in all actions subject to
213 and brought under the provisions of this chapter, notwithstanding
214 the nature of the claim, the label or other characterization the
215 claimant may use to describe it, or the provisions of any other
216 statute of limitations that would otherwise govern the type of
217 claim or legal theory if it were not subject to or brought under
218 the provisions of this chapter.

219 (4) From and after April 1, 1993, if any person entitled to
220 bring any action under this chapter shall, at the time at which



the cause of action accrued, be under the disability of infancy or unsoundness of mind, he may bring the action within the time allowed in this section after his disability shall be removed as provided by law. The savings in favor of persons under disability of unsoundness of mind shall never extend longer than twenty-one (21) years.

SECTION 4. Section 11-46-19, Mississippi Code of 1972, is amended as follows:

11-46-19. (1) The board shall have the following powers:

(a) To provide oversight over the Tort Claims Fund;

(b) To approve any award made from the Tort Claims Fund;

(c) To pay all necessary expenses attributable to the operation of the Tort Claims Fund from such fund;

(d) To assign litigated claims against governmental entities other than political subdivisions to competent attorneys unless such governmental entity has a staff attorney who is competent to represent the governmental entity and is approved by the board; the board shall give primary consideration to attorneys practicing in the jurisdiction where the claim arose in assigning cases; attorneys hired to represent a governmental entity other than a political subdivision shall be paid according to the department fee schedule;

(e) To approve all claimants' attorney fees in claims against the state;



246 (f) To employ on a full-time basis a staff attorney who
247 shall possess the minimum qualifications required to be a member
248 of The Mississippi Bar, and such other staff as it may deem
249 necessary to carry out the purposes of this chapter; the employees
250 in the positions approved by the board shall be hired by the
251 director, shall be employees of the department, and shall be
252 compensated from the Tort Claims Fund;

253 (g) To contract with one or more reputable insurance
254 consulting firms as may be necessary;

255 (h) To purchase any policies of liability insurance and
256 to administer any plan of self-insurance or policies of liability
257 insurance required for the protection of the state against claims
258 and suits brought under this chapter;

259 (i) To expend money from the Tort Claims Fund for the
260 purchase of any policies of liability insurance and the payment of
261 any award or settlement of a claim against the state under the
262 provisions of this chapter or of a claim against any school
263 district, junior college or community college district, or state
264 agency, arising from the operation of school buses or other
265 vehicles, under the provisions of Section 37-41-42;

266 (j) To cancel, modify or replace any policy or policies
267 of liability insurance procured by the board;

268 (k) To issue certificates of coverage to governmental
269 entities, including any political subdivision participating in any
270 plan of liability protection approved by the board;



271 (1) To review and approve or reject any plan of
272 liability insurance or self-insurance reserves proposed or
273 provided by political subdivisions if such plan is intended to
274 serve as security for risks of claims and suits against them for
275 which immunity has been waived under this chapter;

276 (m) To administer disposition of claims against the
277 Tort Claims Fund;

278 (n) To withhold issuance of any warrants payable from
279 funds of a participating state entity should such entity fail to
280 make required contributions to the Tort Claims Fund in the time
281 and manner prescribed by the board;

282 (o) To develop a comprehensive statewide list of
283 attorneys who are qualified to represent the state and any
284 employee thereof named as a defendant in a claim brought under
285 this chapter against the state or such employee;

286 (p) To develop a schedule of fees for paying attorneys
287 defending claims against the state or an employee thereof;

288 (q) To adopt and promulgate such reasonable rules and
289 regulations and to do and perform all such acts as are necessary
290 to carry out its powers and duties under this chapter;

291 (r) To establish and assess premiums to be paid by
292 governmental entities required to participate in the Tort Claims
293 Fund;

294 (s) To contract with a third-party administrator to
295 process claims against the state under this chapter;



(t) To annually submit its budget request to the Legislature as a state agency;

(u) To dispose of salvage obtained in settlement or payment of any claim at fair market value by such means and upon such terms as the board may think best; and

(v) To administer the Medical Malpractice Insurance Availability Plan under Section 83-48-5. The provisions of this paragraph (v) shall stand repealed from and after the transfer of the plan's assets and liabilities as provided in Section 83-48-6(i).

(w) To develop and maintain a comprehensive statewide list of employees who work for entities that are not covered by this chapter, and to publish such list on the board's website.

(x) To create policies and procedures that require employees who work for entities that are not covered by this chapter to register certain information with the board before any tortious wrongful or otherwise actionable conduct occurs.

(2) Policies of liability insurance purchased for the protection of governmental entities against claims and suits brought under this chapter shall be purchased pursuant to the competitive bidding procedures set forth in Section 31-7-13.

(3) The department shall have the following powers and duties:

(a) To annually report to the Legislature concerning each comprehensive plan of liability protection established



321 pursuant to Section 11-46-17(2). Such report shall include a
322 comprehensive analysis of the cost of the plan, a breakdown of the
323 cost to participating state entities, and such other information
324 as the department may deem necessary.

325 (b) To provide the board with any staff and meeting
326 facilities as may be necessary to carry out the duties of the
327 board as provided in this chapter.

328 (c) To submit the board's budget request for the
329 initial year of operation of the board in order to authorize
330 expenditures for the 1993-1994 fiscal year and for the
331 appropriation of such general funds as shall be required for the
332 commencement of its activities.

333 **SECTION 5.** This act shall take effect and be in force from
334 and after July 1, 2025.

