

By: Senator(s) Burton, Hall

To: Judiciary

SENATE BILL NO. 2091

1 AN ACT TO DIRECT STATE AGENCIES TO ASSURE THAT THERE IS NO
2 DISRUPTION OF CRITICAL SERVICES BECAUSE OF THE YEAR 2000 COMPUTER
3 CONVERSION PROBLEM AND TO COOPERATE WITH OTHER STATE AGENCIES AND
4 PRIVATE SECTOR OPERATORS AS NECESSARY; TO PRESCRIBE THE DUTIES AND
5 RESPONSIBILITIES OF AGENCY HEADS REGARDING TIMELY YEAR 2000
6 COMPUTER CONVERSION; TO DIRECT THE MISSISSIPPI DEPARTMENT OF
7 INFORMATION TECHNOLOGY SERVICES TO DEVELOP AGENCY COMPUTER
8 CONVERSION STATUS REPORTS; TO AMEND SECTION 11-46-9, MISSISSIPPI
9 CODE OF 1972, TO PROVIDE IMMUNITY UNDER THE MISSISSIPPI TORT
10 CLAIMS ACT FROM CLAIMS BASED ON CERTAIN COMPUTER FAILURES; AND FOR
11 RELATED PURPOSES.

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

13 SECTION 1. The Legislature hereby finds and declares that
14 because of a design feature in many electronic systems, a large
15 number of activities in the public and private sectors could be at
16 risk beginning in the Year 2000. Some computer systems and other
17 electronic devices will misinterpret the year "00" as 1900, rather
18 than 2000. Unless appropriate action is taken, this flaw, known
19 as the Year 2000 conversion problem, hereafter referred to as the
20 "Y2K problem," may cause systems that support critical government
21 functions dependent on electronic systems to compute erroneously
22 or simply not operate. Minimizing the Y2K problem will require a
23 major technological and managerial effort, and it is critical that
24 Mississippi government do its part in addressing this challenge.

25 SECTION 2. (1) For purposes of this act, "agency" shall
26 mean any state board, commission, council, community college,
27 junior college, university, department or unit thereof created by
28 the Constitution or statutes if such board, commission committee,
29 council, university, department, unit or the head thereof is
30 authorized to appoint subordinate staff by the Constitution or

31 statute, except a legislative or judicial board, commission,
32 committee, council, department or unit thereof.

33 (2) All agencies shall:

34 (a) Assure that no critical state program experiences
35 disruption because of the Y2K problem;

36 (b) Assist and cooperate with other federal, state and
37 local governments to address the Y2K problem where those
38 governments depend on Mississippi information or information
39 technology or where Mississippi government is dependent on those
40 governments to perform critical missions; and

41 (c) Cooperate with the private sector operators of
42 critical national and local systems, including the banking and
43 financial system, the telecommunications system, the public health
44 system, the transportation system, and the electric power
45 generation system, in addressing the Y2K problem.

46 SECTION 3. (1) The administrative head of each agency
47 shall:

48 (a) Assure that efforts to address the Y2K problem
49 receive the highest priority attention in the agency;

50 (b) Monitor progress on agency's mission critical
51 applications and associated interfaces with other government or
52 business entities to assure timely Year 2000 compliance; and

53 (c) Provide status reports on Year 2000 compliance for
54 mission critical applications and interfaces as requested by the
55 Department of Information Technology Services.

56 (2) The Department of Information Technology Services shall
57 develop status reporting procedures and schedules and shall report
58 periodically to the Governor and the Legislature.

59 (3) The appropriate management committees of the Mississippi
60 Legislature and the Administrative Office of Courts under the
61 direction of the Mississippi Supreme Court are fully authorized in
62 their discretion to participate in and cooperate with the
63 activities established under this act.

64 SECTION 4. This act is intended only to improve the internal
65 management of the executive branch of government and does not
66 create any right or benefit, substantive or procedural,
67 enforceable at law or equity by a party against the State of

68 Mississippi, its agencies, or instrumentalities, its officers or
69 employees, or any other person.

70 SECTION 5. Section 11-46-9, Mississippi Code of 1972, is
71 amended as follows:

72 11-46-9. (1) A governmental entity and its employees acting
73 within the course and scope of their employment or duties shall
74 not be liable for any claim:

75 (a) Arising out of a legislative or judicial action or
76 inaction, or administrative action or inaction of a legislative or
77 judicial nature;

78 (b) Arising out of any act or omission of an employee
79 of a governmental entity exercising ordinary care in reliance
80 upon, or in the execution or performance of, or in the failure to
81 execute or perform, a statute, ordinance or regulation, whether or
82 not the statute, ordinance or regulation be valid;

83 (c) Arising out of any act or omission of an employee
84 of a governmental entity engaged in the performance or execution
85 of duties or activities relating to police or fire protection
86 unless the employee acted in reckless disregard of the safety and
87 well-being of any person not engaged in criminal activity at the
88 time of injury;

89 (d) Based upon the exercise or performance or the
90 failure to exercise or perform a discretionary function or duty on
91 the part of a governmental entity or employee thereof, whether or
92 not the discretion be abused;

93 (e) Arising out of an injury caused by adopting or
94 failing to adopt a statute, ordinance or regulation;

95 (f) Which is limited or barred by the provisions of any
96 other law;

97 (g) Arising out of the exercise of discretion in
98 determining whether or not to seek or provide the resources
99 necessary for the purchase of equipment, the construction or
100 maintenance of facilities, the hiring of personnel and, in

101 general, the provision of adequate governmental services;

102 (h) Arising out of the issuance, denial, suspension or
103 revocation of, or the failure or refusal to issue, deny, suspend
104 or revoke any privilege, ticket, pass, permit, license,
105 certificate, approval, order or similar authorization where the
106 governmental entity or its employee is authorized by law to
107 determine whether or not such authorization should be issued,
108 denied, suspended or revoked unless such issuance, denial,
109 suspension or revocation, or failure or refusal thereof, is of a
110 malicious or arbitrary and capricious nature;

111 (i) Arising out of the assessment or collection of any
112 tax or fee;

113 (j) Arising out of the detention of any goods or
114 merchandise by any law enforcement officer, unless such detention
115 is of a malicious or arbitrary and capricious nature;

116 (k) Arising out of the imposition or establishment of a
117 quarantine, whether such quarantine relates to persons or
118 property;

119 (l) Of any claimant who is an employee of a
120 governmental entity and whose injury is covered by the Workers'
121 Compensation Law of this state by benefits furnished by the
122 governmental entity by which he is employed;

123 (m) Of any claimant who at the time the claim arises is
124 an inmate of any detention center, jail, workhouse, penal farm,
125 penitentiary or other such institution, regardless of whether such
126 claimant is or is not an inmate of any detention center, jail,
127 workhouse, penal farm, penitentiary or other such institution when
128 the claim is filed;

129 (n) Arising out of any work performed by a person
130 convicted of a crime when the work is performed pursuant to any
131 sentence or order of any court or pursuant to laws of the State of
132 Mississippi authorizing or requiring such work;

133 (o) Under circumstances where liability has been or is

134 hereafter assumed by the United States, to the extent of such
135 assumption of liability, including, but not limited to, any claim
136 based on activities of the Mississippi National Guard when such
137 claim is cognizable under the National Guard Tort Claims Act of
138 the United States, 32 USC 715 (32 USCS 715), or when such claim
139 accrues as a result of active federal service or state service at
140 the call of the Governor for quelling riots and civil
141 disturbances;

142 (p) Arising out of a plan or design for construction or
143 improvements to public property, including, but not limited to,
144 public buildings, highways, roads, streets, bridges, levees,
145 dikes, dams, impoundments, drainage channels, diversion channels,
146 harbors, ports, wharfs or docks, where such plan or design has
147 been approved in advance of the construction or improvement by the
148 legislative body or governing authority of a governmental entity
149 or by some other body or administrative agency, exercising
150 discretion by authority to give such approval, and where such plan
151 or design is in conformity with engineering or design standards in
152 effect at the time of preparation of the plan or design;

153 (q) Arising out of an injury caused solely by the
154 effect of weather conditions on the use of streets and highways;

155 (r) Arising out of the lack of adequate personnel or
156 facilities at a state hospital or state corrections facility if
157 reasonable use of available appropriations has been made to
158 provide such personnel or facilities;

159 (s) Arising out of loss, damage or destruction of
160 property of a patient or inmate of a state institution;

161 (t) Arising out of any loss of benefits or compensation
162 due under a program of public assistance or public welfare;

163 (u) Arising out of or resulting from riots, unlawful
164 assemblies, unlawful public demonstrations, mob violence or civil
165 disturbances;

166 (v) Arising out of an injury caused by a dangerous

167 condition on property of the governmental entity that was not
168 caused by the negligent or other wrongful conduct of an employee
169 of the governmental entity or of which the governmental entity did
170 not have notice, either actual or constructive, and adequate
171 opportunity to protect or warn against; provided, however, that a
172 governmental entity shall not be liable for the failure to warn of
173 a dangerous condition which is obvious to one exercising due care;

174 (w) Arising out of the absence, condition, malfunction
175 or removal by third parties of any sign, signal, warning device,
176 illumination device, guardrail or median barrier, unless the
177 absence, condition, malfunction or removal is not corrected by the
178 governmental entity responsible for its maintenance within a
179 reasonable time after actual or constructive notice; * * *

180 (x) Arising out of the administration of corporal
181 punishment or the taking of any action to maintain control and
182 discipline of students, as defined in Section 37-11-57, by a
183 teacher, assistant teacher, principal or assistant principal of a
184 public school district in the state unless the teacher, assistant
185 teacher, principal or assistant principal acted in bad faith or
186 with malicious purpose or in a manner exhibiting a wanton and
187 willful disregard of human rights or safety; or

188 (y) Any claim arising from the failure of a computer,
189 software program, database, network, information system, firmware
190 or any other device, whether operated by or on behalf of the
191 governmental entity, to interpret, produce, calculate, generate,
192 or account for a date which is compatible with the "Year 2000"
193 date change.

194 (2) A governmental entity shall also not be liable for any
195 claim where the governmental entity:

- 196 (a) Is inactive and dormant;
197 (b) Receives no revenue;
198 (c) Has no employees; and
199 (d) Owns no property.

200 (3) If a governmental entity exempt from liability by
201 subsection (2) becomes active, receives income, hires employees or
202 acquires any property, such governmental entity shall no longer be
203 exempt from liability as provided in subsection (2) and shall be
204 subject to the provisions of this chapter.

205 SECTION 6. This act shall take effect and be in force from
206 and after its passage.