

By: Watson

To: Judiciary A

HOUSE BILL NO. 964

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 11-46-9, MISSISSIPPI CODE OF 1972, TO DIRECT STATUTORY
4 CONSTRUCTION OF EXEMPTIONS UNDER THE TORT CLAIMS ACT; AND FOR
5 RELATED PURPOSES.

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

7 SECTION 1. Section 11-46-1, Mississippi Code of 1972, is
8 amended as follows:[JU1]

9 11-46-1. As used in this chapter the following terms shall
10 have the meanings herein ascribed unless the context otherwise
11 requires:

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

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

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

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

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

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

28 The term "employee" shall not mean a person or other legal entity
29 while acting in the capacity of an independent contractor under
30 contract to the state or a political subdivision; provided,
31 however, that for purposes of the limits of liability provided for
32 in Section 11-46-15, the term "employee" shall include physicians
33 under contract to provide health services with the State Board of
34 Health, the State Board of Mental Health or any county or
35 municipal jail facility while rendering services under such
36 contract. The term "employee" shall also include Mississippi
37 Department of Human Services licensed foster parents for the
38 limited purposes of coverage under the Tort Claims Act as provided
39 in Section 11-46-8.

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

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

45 (i) "Political subdivision" means any body politic or
46 body corporate other than the state responsible for governmental
47 activities only in geographic areas smaller than that of the
48 state, including but not limited to any county, municipality,
49 school district, community hospital as defined in Section
50 41-13-10, Mississippi Code of 1972, airport authority or other
51 instrumentality thereof, whether or not such body or
52 instrumentality thereof has the authority to levy taxes or to sue
53 or be sued in its own name.

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

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

65 (1) "Discretionary" means acting in accordance with
66 personal deliberation, judgment or choice regarding matters
67 susceptible to policy analysis or where no state or federal
68 statute, regulation or policy specifically prescribes a course of
69 action for the governmental entity and its employees to follow.
70 An act is "discretionary" regardless of whether ordinary care is
71 utilized by the governmental entity or its employees, although
72 grossly negligent or intentionally negligent decisions or acts do
73 not constitute discretionary decisions or acts. Whenever a state
74 or federal statute regulation or established policy allows a
75 governmental entity and its employees to exercise judgment, choice
76 or discretion, a presumption exists that any such act is grounded
77 in policy in the exercise of judgment, choice or discretion.

78 SECTION 2. Section 11-46-9, Mississippi Code of 1972, is
79 amended as follows:[JU2]

80 11-46-9. (1) A governmental entity and its employees acting
81 within the course and scope of their employment or duties shall
82 not be liable for any claim:

83 (a) Arising out of a legislative or judicial action or
84 inaction, or administrative action or inaction of a legislative or
85 judicial nature;

86 (b) Arising out of any act or omission of an employee
87 of a governmental entity exercising ordinary care in reliance
88 upon, or in the execution or performance of, or in the failure to
89 execute or perform, a statute, ordinance or regulation, whether or
90 not the statute, ordinance or regulation be valid;

91 (c) Arising out of any act or omission of an employee
92 of a governmental entity engaged in the performance or execution
93 of duties or activities relating to police or fire protection
94 unless the employee acted in reckless disregard of the safety and
95 well-being of any person not engaged in criminal activity at the
96 time of injury;

97 (d) Based upon the exercise or performance or the

98 failure to exercise or perform a discretionary function or duty on
99 the part of a governmental entity or employee thereof, whether or
100 not the discretion be abused;

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

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

105 (g) Arising out of the exercise of discretion in
106 determining whether or not to seek or provide the resources
107 necessary for the purchase of equipment, the construction or
108 maintenance of facilities, the hiring of personnel and, in
109 general, the provision of adequate governmental services;

110 (h) Arising out of the issuance, denial, suspension or
111 revocation of, or the failure or refusal to issue, deny, suspend
112 or revoke any privilege, ticket, pass, permit, license,
113 certificate, approval, order or similar authorization where the
114 governmental entity or its employee is authorized by law to
115 determine whether or not such authorization should be issued,
116 denied, suspended or revoked unless such issuance, denial,
117 suspension or revocation, or failure or refusal thereof, is of a
118 malicious or arbitrary and capricious nature;

119 (i) Arising out of the assessment or collection of any
120 tax or fee;

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

124 (k) Arising out of the imposition or establishment of a
125 quarantine, whether such quarantine relates to persons or
126 property;

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

131 (m) Of any claimant who at the time the claim arises is
132 an inmate of any detention center, jail, workhouse, penal farm,
133 penitentiary or other such institution, regardless of whether such
134 claimant is or is not an inmate of any detention center, jail,
135 workhouse, penal farm, penitentiary or other such institution when
136 the claim is filed;

137 (n) Arising out of any work performed by a person
138 convicted of a crime when the work is performed pursuant to any
139 sentence or order of any court or pursuant to laws of the State of
140 Mississippi authorizing or requiring such work;

141 (o) Under circumstances where liability has been or is
142 hereafter assumed by the United States, to the extent of such
143 assumption of liability, including but not limited to any claim
144 based on activities of the Mississippi National Guard when such
145 claim is cognizable under the National Guard Tort Claims Act of
146 the United States, 32 USC 715 (32 USCS 715), or when such claim
147 accrues as a result of active federal service or state service at
148 the call of the Governor for quelling riots and civil
149 disturbances;

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

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

163 (r) Arising out of the lack of adequate personnel or

164 facilities at a state hospital or state corrections facility if
165 reasonable use of available appropriations has been made to
166 provide such personnel or facilities;

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

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

171 (u) Arising out of or resulting from riots, unlawful
172 assemblies, unlawful public demonstrations, mob violence or civil
173 disturbances;

174 (v) Arising out of an injury caused by a dangerous
175 condition on property of the governmental entity that was not
176 caused by the negligent or other wrongful conduct of an employee
177 of the governmental entity or of which the governmental entity did
178 not have notice, either actual or constructive, and adequate
179 opportunity to protect or warn against; provided, however, that a
180 governmental entity shall not be liable for the failure to warn of
181 a dangerous condition which is obvious to one exercising due care;

182 (w) Arising out of the absence, condition, malfunction
183 or removal by third parties of any sign, signal, warning device,
184 illumination device, guardrail or median barrier, unless the
185 absence, condition, malfunction or removal is not corrected by the
186 governmental entity responsible for its maintenance within a
187 reasonable time after actual or constructive notice; or

188 (x) Arising out of the administration of corporal
189 punishment or the taking of any action to maintain control and
190 discipline of students, as defined in Section 37-11-57, by a
191 teacher, assistant teacher, principal or assistant principal of a
192 public school district in the state unless the teacher, assistant
193 teacher, principal or assistant principal acted in bad faith or
194 with malicious purpose or in a manner exhibiting a wanton and
195 willful disregard of human rights or safety.

196 (2) A governmental entity shall also not be liable for any

197 claim where the governmental entity:

198 (a) Is inactive and dormant;

199 (b) Receives no revenue;

200 (c) Has no employees; and

201 (d) Owns no property.

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

207 (4) Exemptions provided in this chapter are provided in the
208 disjunctive and may not be read together but shall be read and
209 applied as alternatives separate and apart from one another; the
210 language contained in any particular exemption or exemptions shall
211 not be applied or used in any manner to limit or otherwise
212 diminish the immunity from liability provided in any other
213 exemption or exemptions contained in this chapter.

214 SECTION 3. This act shall take effect and be in force from
215 and after its passage.