

By: Coleman (65th), Fleming

To: Judiciary A

HOUSE BILL NO. 1242

1 AN ACT TO AMEND SECTION 11-46-9, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE STANDARD OF CARE REGARDING POLICE OR FIRE PROTECTION
3 ACTIVITIES; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 11-46-9, Mississippi Code of 1972, is
6 amended as follows:

7 11-46-9. (1) A governmental entity and its employees acting
8 within the course and scope of their employment or duties shall
9 not be liable for any claim:

10 (a) Arising out of a legislative or judicial action or
11 inaction, or administrative action or inaction of a legislative or
12 judicial nature;

13 (b) Arising out of any act or omission of an employee
14 of a governmental entity exercising ordinary care in reliance
15 upon, or in the execution or performance of, or in the failure to
16 execute or perform, a statute, ordinance or regulation, whether or
17 not the statute, ordinance or regulation be valid;

18 (c) Arising out of any act or omission of an employee
19 of a governmental entity engaged in the performance or execution
20 of duties or activities relating to police or fire protection
21 unless the employee acted in intentional disregard of the safety
22 and well-being of any person not engaged in criminal activity at
23 the time of injury;

24 (d) Based upon the exercise or performance or the
25 failure to exercise or perform a discretionary function or duty on
26 the part of a governmental entity or employee thereof, whether or

27 not the discretion be abused;

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

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

32 (g) Arising out of the exercise of discretion in
33 determining whether or not to seek or provide the resources
34 necessary for the purchase of equipment, the construction or
35 maintenance of facilities, the hiring of personnel and, in
36 general, the provision of adequate governmental services;

37 (h) Arising out of the issuance, denial, suspension or
38 revocation of, or the failure or refusal to issue, deny, suspend
39 or revoke any privilege, ticket, pass, permit, license,
40 certificate, approval, order or similar authorization where the
41 governmental entity or its employee is authorized by law to
42 determine whether or not such authorization should be issued,
43 denied, suspended or revoked unless such issuance, denial,
44 suspension or revocation, or failure or refusal thereof, is of a
45 malicious or arbitrary and capricious nature;

46 (i) Arising out of the assessment or collection of any
47 tax or fee;

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

51 (k) Arising out of the imposition or establishment of a
52 quarantine, whether such quarantine relates to persons or
53 property;

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

58 (m) Of any claimant who at the time the claim arises is
59 an inmate of any detention center, jail, workhouse, penal farm,
60 penitentiary or other such institution, regardless of whether such
61 claimant is or is not an inmate of any detention center, jail,
62 workhouse, penal farm, penitentiary or other such institution when
63 the claim is filed;

64 (n) Arising out of any work performed by a person
65 convicted of a crime when the work is performed pursuant to any
66 sentence or order of any court or pursuant to laws of the State of
67 Mississippi authorizing or requiring such work;

68 (o) Under circumstances where liability has been or is
69 hereafter assumed by the United States, to the extent of such
70 assumption of liability, including but not limited to any claim
71 based on activities of the Mississippi National Guard when such
72 claim is cognizable under the National Guard Tort Claims Act of
73 the United States, 32 USC 715 (32 USCS 715), or when such claim
74 accrues as a result of active federal service or state service at
75 the call of the Governor for quelling riots and civil
76 disturbances;

77 (p) Arising out of a plan or design for construction or
78 improvements to public property, including but not limited to,
79 public buildings, highways, roads, streets, bridges, levees,
80 dikes, dams, impoundments, drainage channels, diversion channels,
81 harbors, ports, wharfs or docks, where such plan or design has
82 been approved in advance of the construction or improvement by the
83 legislative body or governing authority of a governmental entity
84 or by some other body or administrative agency, exercising
85 discretion by authority to give such approval, and where such plan
86 or design is in conformity with engineering or design standards in
87 effect at the time of preparation of the plan or design;

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

90 (r) Arising out of the lack of adequate personnel or
91 facilities at a state hospital or state corrections facility if
92 reasonable use of available appropriations has been made to
93 provide such personnel or facilities;

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

96 (t) Arising out of any loss of benefits or compensation

97 due under a program of public assistance or public welfare;

98 (u) Arising out of or resulting from riots, unlawful
99 assemblies, unlawful public demonstrations, mob violence or civil
100 disturbances;

101 (v) Arising out of an injury caused by a dangerous
102 condition on property of the governmental entity that was not
103 caused by the negligent or other wrongful conduct of an employee
104 of the governmental entity or of which the governmental entity did
105 not have notice, either actual or constructive, and adequate
106 opportunity to protect or warn against; provided, however, that a
107 governmental entity shall not be liable for the failure to warn of
108 a dangerous condition which is obvious to one exercising due care;

109 (w) Arising out of the absence, condition, malfunction
110 or removal by third parties of any sign, signal, warning device,
111 illumination device, guardrail or median barrier, unless the
112 absence, condition, malfunction or removal is not corrected by the
113 governmental entity responsible for its maintenance within a
114 reasonable time after actual or constructive notice; or

115 (x) Arising out of the administration of corporal
116 punishment or the taking of any action to maintain control and
117 discipline of students, as defined in Section 37-11-57, by a
118 teacher, assistant teacher, principal or assistant principal of a
119 public school district in the state unless the teacher, assistant
120 teacher, principal or assistant principal acted in bad faith or
121 with malicious purpose or in a manner exhibiting a wanton and
122 willful disregard of human rights or safety.

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

125 (a) Is inactive and dormant;

126 (b) Receives no revenue;

127 (c) Has no employees; and

128 (d) Owns no property.

129 (3) If a governmental entity exempt from liability by

130 subsection (2) becomes active, receives income, hires employees or
131 acquires any property, such governmental entity shall no longer be
132 exempt from liability as provided in subsection (2) and shall be
133 subject to the provisions of this chapter.

134 SECTION 2. This act shall take effect and be in force from
135 and after July 1, 2000.