

By: Senator(s) Michel

To: Judiciary

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2100

1 AN ACT TO CREATE IMMUNITY FROM SUIT FOR CERTAIN INJURIES
2 SUSTAINED FROM PARTICIPATION IN A FAN CELEBRATION; TO AMEND
3 SECTION 11-46-9, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR
4 RELATED PURPOSES.

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

6 **SECTION 1.** (1) (a) Except as provided in subsection (2) of
7 this section, no post-secondary educational institution shall be
8 liable for an injury to or the death of a person resulting from
9 the person's participation in a fan celebration on a restricted
10 area of a field or court of play during or after an athletic
11 event, and a participant's representative shall not make any claim
12 against, or recover from a post-secondary educational institution
13 for injury, loss, damage or death of the participant resulting
14 from any of the inherent risks of such participation.

15 (b) For the purposes of this section, "post-secondary
16 educational institution" means any post-secondary educational
17 institution, including, but not limited to, any college,
18 university, community college or junior college, whether public or
19 private.

20 (2) Nothing in subsection (1) of this section shall prevent
21 or limit liability if:

22 (a) The defendant or agent of the defendant commits an
23 act or omission that constitutes willful or wanton disregard for
24 the safety of persons comporting themselves lawfully, and that act
25 or omission caused the injury.

26 (b) The defendant or agent of the defendant
27 intentionally injures the participant.



28 (3) Nothing in subsection (1) of this section shall prevent
29 or limit liability under liability provisions as set forth in
30 product liability laws.

31 **SECTION 2.** Section 11-46-9, Mississippi Code of 1972, is
32 amended as follows:

33 11-46-9. (1) A governmental entity and its employees acting
34 within the course and scope of their employment or duties shall
35 not be liable for any claim:

36 (a) Arising out of a legislative or judicial action or
37 inaction, or administrative action or inaction of a legislative or
38 judicial nature;

39 (b) Arising out of any act or omission of an employee
40 of a governmental entity exercising ordinary care in reliance
41 upon, or in the execution or performance of, or in the failure to
42 execute or perform, a statute, ordinance or regulation, whether or
43 not the statute, ordinance or regulation be valid;

44 (c) Arising out of any act or omission of an employee
45 of a governmental entity engaged in the performance or execution
46 of duties or activities relating to police or fire protection
47 unless the employee acted in reckless disregard of the safety and
48 well-being of any person not engaged in criminal activity at the
49 time of injury;

50 (d) Based upon the exercise or performance or the
51 failure to exercise or perform a discretionary function or duty on
52 the part of a governmental entity or employee thereof, whether or
53 not the discretion be abused;

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

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

58 (g) Arising out of the exercise of discretion in
59 determining whether or not to seek or provide the resources
60 necessary for the purchase of equipment, the construction or



61 maintenance of facilities, the hiring of personnel and, in
62 general, the provision of adequate governmental services;

63 (h) Arising out of the issuance, denial, suspension or
64 revocation of, or the failure or refusal to issue, deny, suspend
65 or revoke any privilege, ticket, pass, permit, license,
66 certificate, approval, order or similar authorization where the
67 governmental entity or its employee is authorized by law to
68 determine whether or not such authorization should be issued,
69 denied, suspended or revoked unless such issuance, denial,
70 suspension or revocation, or failure or refusal thereof, is of a
71 malicious or arbitrary and capricious nature;

72 (i) Arising out of the assessment or collection of any
73 tax or fee;

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

77 (k) Arising out of the imposition or establishment of a
78 quarantine, whether such quarantine relates to persons or
79 property;

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

84 (m) Of any claimant who at the time the claim arises is
85 an inmate of any detention center, jail, workhouse, penal farm,
86 penitentiary or other such institution, regardless of whether such
87 claimant is or is not an inmate of any detention center, jail,
88 workhouse, penal farm, penitentiary or other such institution when
89 the claim is filed;

90 (n) Arising out of any work performed by a person
91 convicted of a crime when the work is performed pursuant to any
92 sentence or order of any court or pursuant to laws of the State of
93 Mississippi authorizing or requiring such work;



94 (o) Under circumstances where liability has been or is
95 hereafter assumed by the United States, to the extent of such
96 assumption of liability, including but not limited to any claim
97 based on activities of the Mississippi National Guard when such
98 claim is cognizable under the National Guard Tort Claims Act of
99 the United States, 32 USC 715 (32 USCS 715), or when such claim
100 accrues as a result of active federal service or state service at
101 the call of the Governor for quelling riots and civil
102 disturbances;

103 (p) Arising out of a plan or design for construction or
104 improvements to public property, including but not limited to,
105 public buildings, highways, roads, streets, bridges, levees,
106 dikes, dams, impoundments, drainage channels, diversion channels,
107 harbors, ports, wharfs or docks, where such plan or design has
108 been approved in advance of the construction or improvement by the
109 legislative body or governing authority of a governmental entity
110 or by some other body or administrative agency, exercising
111 discretion by authority to give such approval, and where such plan
112 or design is in conformity with engineering or design standards in
113 effect at the time of preparation of the plan or design;

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

116 (r) Arising out of the lack of adequate personnel or
117 facilities at a state hospital or state corrections facility if
118 reasonable use of available appropriations has been made to
119 provide such personnel or facilities;

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

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

124 (u) Arising out of or resulting from riots, unlawful
125 assemblies, unlawful public demonstrations, fan celebrations



126 during or after an athletic event on a restricted area of a field,
127 arena or court of play, mob violence or civil disturbances;

128 (v) Arising out of an injury caused by a dangerous
129 condition on property of the governmental entity that was not
130 caused by the negligent or other wrongful conduct of an employee
131 of the governmental entity or of which the governmental entity did
132 not have notice, either actual or constructive, and adequate
133 opportunity to protect or warn against; provided, however, that a
134 governmental entity shall not be liable for the failure to warn of
135 a dangerous condition which is obvious to one exercising due care;

136 (w) Arising out of the absence, condition, malfunction
137 or removal by third parties of any sign, signal, warning device,
138 illumination device, guardrail or median barrier, unless the
139 absence, condition, malfunction or removal is not corrected by the
140 governmental entity responsible for its maintenance within a
141 reasonable time after actual or constructive notice; or

142 (x) Arising out of the administration of corporal
143 punishment or the taking of any action to maintain control and
144 discipline of students, as defined in Section 37-11-57, by a
145 teacher, assistant teacher, principal or assistant principal of a
146 public school district in the state unless the teacher, assistant
147 teacher, principal or assistant principal acted in bad faith or
148 with malicious purpose or in a manner exhibiting a wanton and
149 willful disregard of human rights or safety.

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

- 152 (a) Is inactive and dormant;
153 (b) Receives no revenue;
154 (c) Has no employees; and
155 (d) Owns no property.

156 (3) If a governmental entity exempt from liability by
157 subsection (2) becomes active, receives income, hires employees or
158 acquires any property, such governmental entity shall no longer be



159 exempt from liability as provided in subsection (2) and shall be
160 subject to the provisions of this chapter.

161 **SECTION 3.** This act shall take effect and be in force from
162 and after July 1, 2002.

