

By: Senator(s) Michel

To: Judiciary

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 institution of higher learning shall be liable
8 for an injury to or the death of a person resulting from the
9 person's participation in a fan celebration on a field or court of
10 play during or after an athletic event, and a participant's
11 representative shall not make any claim against, or recover from
12 any other person for injury, loss, damage or death of the
13 participant resulting from any of the inherent risks of such
14 participation.

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

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

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

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



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

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

32 11-46-9. (1) A governmental entity and its employees acting
33 within the course and scope of their employment or duties shall
34 not be liable for any claim:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

151 (a) Is inactive and dormant;

152 (b) Receives no revenue;

153 (c) Has no employees; and

154 (d) Owns no property.

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



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

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

