MISSISSIPPI LEGISLATURE

REGULAR SESSION 2002

By: Senator(s) Michel

To: Judiciary

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2100

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

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

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

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

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

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

(b) The defendant or agent of the defendant intentionally injures the participant.
(3) Nothing in subsection (1) of this section shall prevent
or limit liability under liability provisions as set forth in
product liability laws.

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

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

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

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

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

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

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

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

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

general, the provision of adequate governmental services;

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

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

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

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

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

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

(n) Arising out of any work performed by a person
convicted of a crime when the work is performed pursuant to any
sentence or order of any court or pursuant to laws of the State of
Mississippi authorizing or requiring such work;
(o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including but not limited to any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USC 715 (32 USCS 715), or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

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

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

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

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

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

(u) Arising out of or resulting from riots, unlawful assemblies, unlawful public demonstrations, fan celebrations
during or after an athletic event on a restricted area of a field, arena or court of play, mob violence or civil disturbances;

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

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

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

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

(a) Is inactive and dormant;

(b) Receives no revenue;

(c) Has no employees; and

(d) Owns no property.

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

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