

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.

