HOUSE BILL NO. 669

AN ACT TO AMEND SECTION 43-1-5, MISSISSIPPI CODE OF 1972, TO DIRECT THE STATE DEPARTMENT OF HUMAN SERVICES TO DEVELOP FORMULAS BY WHICH ALL FUNDS RECEIVED FOR PROGRAMS ADMINISTERED BY THE DEPARTMENT WILL BE APPORTIONED AMONG THE COUNTY DEPARTMENTS OF HUMAN SERVICES ON AN EQUITABLE BASIS, AND EMPLOYEES OF THE DEPARTMENT WHO DIRECTLY PROVIDE CLIENT SERVICES WILL BE APPORTIONED AMONG THE COUNTY DEPARTMENTS ON AN EQUITABLE BASIS; TO AMEND SECTION 11-46-9, MISSISSIPPI CODE OF 1972, TO PROVIDE IMMUNITY TO EMPLOYEES OF THE DEPARTMENT OF HUMAN SERVICES FOR ANY CLAIM ARISING OUT OF ANY ACT OR OMISSION OF THE EMPLOYEE IN THE COURSE OF PROVIDING SERVICES UNDER PROGRAMS ADMINISTERED BY THE DEPARTMENT, EXCEPT IN CERTAIN CASES; TO AMEND SECTION 97-3-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON WHO IS CONVICTED OF ASSAULT AGAINST AN EMPLOYEE OF THE DEPARTMENT OF HUMAN SERVICES WHO WAS PROVIDING SERVICES OF THE DEPARTMENT TO THE PERSON SHALL BE PUNISHED BY IMPRISONMENT FOR NOT LESS THAN TWO YEARS, WHICH MINIMUM PERIOD OF IMPRISONMENT SHALL NOT BE SUSPENDED OR REDUCED BY THE COURT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 43-1-5, Mississippi Code of 1972, is amended as follows:

43-1-5. It shall be the duty of the Department of Human Services to:

(a) Establish and maintain programs not inconsistent with the terms of this chapter and the rules, regulations and policies of the State Department of Human Services, and publish the rules and regulations of the department pertaining to those programs.

(b) Make such reports in such form and containing such information as the federal government may, from time to time, require, and comply with such provisions as the federal government may, from time to time, find necessary to assure the correctness and verification of those reports.

(c) Within ninety (90) days after the end of each fiscal year, and at each regular session of the Legislature, make
and publish one (1) report to the Governor and to the Legislature, showing for the period of time covered, in each county and for the state as a whole:

(i) The total number of recipients;
(ii) The total amount paid to them in cash;
(iii) The maximum and the minimum amount paid to any recipients in any one (1) month;
(iv) The total number of applications;
(v) The number granted;
(vi) The number denied;
(vii) The number cancelled;
(viii) The amount expended for administration of the provisions of this chapter;
(ix) The amount of money received from the federal government, if any;
(x) The amount of money received from recipients of assistance and from their estates and the disposition of same;
(xi) Such other information and recommendations as the Governor may require or the department deems advisable;
(xii) The number of state-owned automobiles purchased and operated during the year by the department, the number purchased and operated out of funds appropriated by the Legislature, the number purchased and operated out of any other public funds, the miles traveled per automobile, the total miles traveled, the average cost per mile and depreciation estimate on each automobile;
(xiii) The cost per mile and total number of miles traveled by department employees in privately owned automobiles, for which reimbursement is made out of state funds;
(xiv) Each association, convention or meeting attended by any department employees, the purposes thereof, the names of the employees attending and the total cost to the state of the convention, association or meeting;
(xv) How the money appropriated to the institutions under the jurisdiction of the department has been expended during the preceding year, beginning and ending with the fiscal year of each institution, exhibiting the salaries paid to officers and employees of the institutions, and each and every item of receipt and expenditure;

(xvi) The activities of each division within the Department of Human Services and recommendations for improvement of the services to be performed by each division;

(xvii) In order of authority, the twenty (20) highest paid employees in the department receiving an annual salary in excess of Forty Thousand Dollars ($40,000.00), by PIN number, job title, job description and annual salary.

Each report shall be balanced and shall begin with the balance at the end of the preceding fiscal year, and if any property belonging to the state or the institution is used for profit, the report shall show the expenses incurred in managing the property and the amount received from the same. The reports shall also show a summary of the gross receipts and gross disbursements for each fiscal year and shall show the money on hand at the beginning of the fiscal period of each division and institution of the department.

(d) Develop formulas to be used by the department by which (i) all state and federal funds received for programs administered by the department will be apportioned among the county departments of human services on an equitable basis, and (ii) employees of the department who directly provide client services will be apportioned among the county departments of human services on an equitable basis. The formulas shall be based on the population and demographics of each county, the number of recipients of services provided by each county department of human services, and the particular needs of each individual county for services provided by the department.
This section shall stand repealed on July 1, 2004.

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 the authorization should be issued, denied, suspended or revoked, unless the 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 the detention is of a malicious or arbitrary and capricious nature;

(k) Arising out of the imposition or establishment of a quarantine, whether the 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 the 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 that work;

(o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of that assumption of liability, including, but not limited to, any claim
based on activities of the Mississippi National Guard when the claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USC 715 (32 USCS 715), or when the 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 the 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 that approval, and where the 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 the 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, 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; however, a governmental entity shall not be liable for the failure to warn of a dangerous condition that 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.

(y) Arising out of any act or omission of an employee of the Department of Human Services in the course of providing services under programs administered by the department, except in cases of willful misconduct, gross negligence or the reckless disregard of the safety and well-being of any person.

(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. Section 97-3-7, Mississippi Code of 1972, is
amended as follows:

97-3-7. (1) A person is guilty of simple assault if he (a)
 attempts to cause or purposely, knowingly or recklessly causes
 bodily injury to another; or (b) negligently causes bodily injury
to another with a deadly weapon or other means likely to produce
death or serious bodily harm; or (c) attempts by physical menace
to put another in fear of imminent serious bodily harm; and, upon
conviction, he shall be punished by a fine of not more than Five
Hundred Dollars ($500.00) or by imprisonment in the county jail
for not more than six (6) months, or both. * * * However, a
person convicted of simple assault (a) upon a statewide elected
official, law enforcement officer, fireman, emergency medical
personnel, public health personnel, social worker employed by the
Department of Human Services or another agency, superintendent,
principal, teacher or other instructional personnel, school
attendance officer, school bus driver, or a judge of a circuit,
chancery, county, justice or youth court or a judge of the Court
of Appeals or a justice of the Supreme Court, district attorney,
legal assistant to a district attorney, county prosecutor,
municipal prosecutor, court reporter employed by a court, court
administrator, clerk or deputy clerk of the court, or public
defender, while such statewide elected official, judge or justice,
law enforcement officer, fireman, emergency medical personnel,
public health personnel, social worker, superintendent, principal,
teacher or other instructional personnel, school attendance
officer, school bus driver, district attorney, legal assistant to
district attorney, county prosecutor, municipal prosecutor,
court reporter employed by a court, court administrator, clerk or
deputy clerk of the court, or public defender is acting within the
scope of his duty, office or employment, or (b) upon a legislator
while the Legislature is in regular or extraordinary session or
while otherwise acting within the scope of his duty, office or
employment, shall be punished by a fine of not more than One
Thousand Dollars ($1,000.00) or by imprisonment for not more than
five (5) years, or both. In addition, a person who is convicted
of simple assault against an employee of the Department of Human
Services who was providing services of the department to the
person shall be punished by imprisonment of not less than two (2)
years nor more than five (5) years, and the minimum period of
imprisonment shall not be suspended or reduced by the court.

(2) A person is guilty of aggravated assault if he (a)
Attempts to cause serious bodily injury to another, or causes such
injury purposely, knowingly or recklessly under circumstances
manifesting extreme indifference to the value of human life; or
(b) attempts to cause or purposely or knowingly causes bodily
injury to another with a deadly weapon or other means likely to
produce death or serious bodily harm; and, upon conviction, he
shall be punished by imprisonment in the county jail for not more
than one (1) year or in the Penitentiary for not more than twenty
(20) years. * * * However, a person convicted of aggravated
assault (a) upon a statewide elected official, law enforcement
officer, fireman, emergency medical personnel, public health
personnel, social worker employed by the Department of Human
Services or another agency, superintendent, principal, teacher or
other instructional personnel, school attendance officer, school
bus driver, or a judge of a circuit, chancery, county, justice or
youth court or a judge of the Court of Appeals or a justice of the
Supreme Court, district attorney, legal assistant to a district
attorney, county prosecutor, municipal prosecutor, court reporter
employed by a court, court administrator, clerk or deputy clerk of
the court, or public defender, while such statewide elected
official, judge or justice, law enforcement officer, fireman,
emergency medical personnel, public health personnel, social
worker, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender is acting within the scope of his duty, office or employment, or (b) upon a legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his duty, office or employment, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than thirty (30) years, or both. In addition, a person who is convicted of aggravated assault against an employee of the Department of Human Services who was providing services of the department to the person shall be punished by imprisonment of not less than two (2) years nor more than thirty (30) years, and the minimum period of imprisonment shall not be suspended or reduced by the court.

(3) A person is guilty of simple domestic violence who commits simple assault as described in subsection (1) of this section against a family or household member who resides with the defendant or who formerly resided with the defendant, a current or former spouse, a person who has a current dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child and upon conviction, the defendant shall be punished as provided under subsection (1) of this section; provided, that upon a third or subsequent conviction of simple domestic violence, whether against the same or another victim and within five (5) years, the defendant shall be guilty of a felony and sentenced to a term of imprisonment not less than five (5) nor more than ten (10) years. In sentencing, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense,
living within either the residence of the victim, the residence of
the perpetrator, or the residence where the offense occurred.

(4) A person is guilty of aggravated domestic violence who
commits aggravated assault as described in subsection (2) of this
section against a family or household member who resides with the
defendant or who formerly resided with the defendant, or a current
or former spouse, a person who has a current dating relationship
with the defendant, or a person with whom the defendant has had a
biological or legally adopted child and upon conviction, the
defendant shall be punished as provided under subsection (2) of
this section; provided, that upon a third or subsequent offense of
aggravated domestic violence, whether against the same or another
victim and within five (5) years, the defendant shall be guilty of
a felony and sentenced to a term of imprisonment of not less than
five (5) nor more than twenty (20) years. In sentencing, the
court shall consider as an aggravating factor whether the crime
was committed in the physical presence or hearing of a child under
sixteen (16) years of age who was, at the time of the offense,
living within either the residence of the victim, the residence of
the perpetrator, or the residence where the offense occurred.
Reasonable discipline of a child, such as spanking, is not an
offense under this subsection (4).

(5) "Dating relationship" means a social relationship of a
romantic or intimate nature.

(6) Every conviction of domestic violence may require as a
condition of any suspended sentence that the defendant participate
in counseling or treatment to bring about the cessation of
domestic abuse. The defendant may be required to pay all or part
of the cost of the counseling or treatment, in the discretion of
the court.

(7) In any conviction of assault as described in any
subsection of this section which arises from an incident of
SECTION 4. This act shall take effect and be in force from and after July 1, 2003.