

By: Representative Robinson (84th)

To: Judiciary A

HOUSE BILL NO. 354

1 AN ACT TO AMEND SECTION 11-46-9, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT LAW ENFORCEMENT OFFICERS ARE IMMUNE FROM CIVIL
3 LIABILITY FOR DAMAGES INCURRED DURING PURSUIT OF A CRIMINAL
4 OFFENDER; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 11-46-9, Mississippi Code of 1972, is
7 amended as follows:

8 11-46-9. (1) A governmental entity and its employees acting
9 within the course and scope of their employment or duties shall
10 not be liable for any claim:

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

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

19 (c) Arising out of any act or omission of an employee
20 of a governmental entity engaged in the performance or execution
21 of duties or activities relating to police or fire protection
22 including the pursuit by law enforcement officers of criminal
23 offenders for felony or misdemeanor offenses, unless the employee
24 acted in reckless disregard of the safety and well-being of any
25 person not engaged in criminal activity at the time of injury;

26 (d) Based upon the exercise or performance or the
27 failure to exercise or perform a discretionary function or duty on

28 the part of a governmental entity or employee thereof, whether or
29 not the discretion be abused;

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

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

34 (g) Arising out of the exercise of discretion in
35 determining whether or not to seek or provide the resources
36 necessary for the purchase of equipment, the construction or
37 maintenance of facilities, the hiring of personnel and, in
38 general, the provision of adequate governmental services;

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

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

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

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

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

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

66 (n) Arising out of any work performed by a person
67 convicted of a crime when the work is performed pursuant to any
68 sentence or order of any court or pursuant to laws of the State of
69 Mississippi authorizing or requiring such work;

70 (o) Under circumstances where liability has been or is
71 hereafter assumed by the United States, to the extent of such
72 assumption of liability, including, but not limited to, any claim
73 based on activities of the Mississippi National Guard when such
74 claim is cognizable under the National Guard Tort Claims Act of
75 the United States, 32 USCS 715 (32 USCS 715), or when such claim
76 accrues as a result of active federal service or state service at
77 the call of the Governor for quelling riots and civil
78 disturbances;

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

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

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

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

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

100 (u) Arising out of or resulting from riots, unlawful
101 assemblies, unlawful public demonstrations, mob violence or civil
102 disturbances;

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

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

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

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

127 (a) Is inactive and dormant;

128 (b) Receives no revenue;

129 (c) Has no employees; and

130 (d) Owns no property.

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

136 **SECTION 2.** This act shall take effect and be in force from
137 and after July 1, 2004.