

By: Representative Snowden

To: Military Affairs

HOUSE BILL NO. 1119

1 AN ACT TO AMEND SECTION 33-1-33, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE MILITARY FACILITIES IN THE STATE WHERE, DURING PERIODS
 3 OF ANNUAL TRAINING, MILITARY POLICE PERSONNEL WILL HAVE CERTAIN
 4 PEACE OFFICER POWERS; TO PROVIDE THAT THE ADJUTANT GENERAL,
 5 MISSISSIPPI MILITARY DEPARTMENT, THE MISSISSIPPI NATIONAL GUARD
 6 AND DESIGNATED CIVILIAN GUARD EMPLOYEES INCLUDING PEACE OFFICERS
 7 AND ARMED OR UNARMED CIVILIAN GUARDS, SHALL HAVE DISCRETION IN THE
 8 PERFORMANCE OF THEIR DUTIES AND SHALL BE IMMUNE FROM LIABILITY
 9 ACCORDING TO THE PROVISIONS OF THE STATE TORT CLAIMS ACT; TO
 10 PROVIDE THAT MONIES FROM THE STATE GENERAL FUND MAY BE UTILIZED
 11 FOR THE TRAINING OF CERTAIN CIVILIAN GUARD OFFICERS AT THE
 12 MISSISSIPPI LAW ENFORCEMENT OFFICERS' TRAINING ACADEMY; TO BRING
 13 FORWARD SECTIONS 11-46-1 AND 11-46-9, MISSISSIPPI CODE OF 1972,
 14 WHICH ARE SECTIONS OF THE STATE TORTS CLAIM ACT, FOR THE PURPOSES
 15 OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 33-1-33, Mississippi Code of 1972, is
 18 amended as follows:

19 33-1-33. (1) The civilian guards employed by the military
 20 department, whether paid by state appropriations, federal funds,
 21 or other authorized funds, or any combination thereof, and
 22 assigned to duties of safeguarding personal and real property
 23 belonging to the state or United States or government mixed
 24 properties or personal properties belonging to officers and men of



25 the National Guard or of the employees of the military department
26 are hereby given peace officer powers of a constable on the
27 military facilities and reservations to which such civilian guards
28 are assigned.

29 (2) During periods of annual training, the Adjutant General
30 may designate personnel of military police units to have peace
31 officer powers of a constable on * * * all military facilities,
32 airfields, or reservations belonging to the Mississippi National
33 Guard including, but not limited to, * * * Camp McCain, Grenada,
34 Mississippi, Camp Shelby, Hattiesburg, Mississippi, and the Air
35 National Guard Training Site, Gulfport, Mississippi, Key Field,
36 Meridian, Mississippi, Thompson Field, Jackson, Mississippi, and
37 Hawkins Field, Jackson, Mississippi, to supplement the civilian
38 guards in subsection (1) above.

39 (3) The Adjutant General may designate civilian guard
40 employee duties to be of such a nature as to require the employee
41 to meet the requirements established by the Board on Law
42 Enforcement Officer Standards and Training for law enforcement
43 officers. For purposes of enforcement, these civilian guard
44 employees shall have the powers of law enforcement officers on the
45 military facilities and reservations to which assigned. The
46 Adjutant General, Mississippi Military Department, the Mississippi
47 National Guard and any designated civilian guard employee
48 including, but not limited to, peace officers and armed or unarmed
49 civilian guards, shall have discretion in the performance of their



50 duties and shall be immune from liability as provided for in
51 Section 11-46-1 et seq. * * * Monies from the State General
52 Fund * * * may be utilized for the training of these officers at
53 the Mississippi Law Enforcement Officers' Training Academy * * *.

54 **SECTION 2.** Section 11-46-1, Mississippi Code of 1972, is
55 brought forward as follows:

56 11-46-1. As used in this chapter, the following terms shall
57 have the meanings ascribed unless the context otherwise requires:

58 (a) "Claim" means any demand to recover damages from a
59 governmental entity as compensation for injuries.

60 (b) "Claimant" means any person seeking compensation
61 under the provisions of this chapter, whether by administrative
62 remedy or through the courts.

63 (c) "Board" means the Mississippi Tort Claims Board.

64 (d) "Department" means the Department of Finance and
65 Administration.

66 (e) "Director" means the executive director of the
67 department who is also the executive director of the board.

68 (f) "Employee" means any officer, employee or servant
69 of the State of Mississippi or a political subdivision of the
70 state, including elected or appointed officials and persons acting
71 on behalf of the state or a political subdivision in any official
72 capacity, temporarily or permanently, in the service of the state
73 or a political subdivision whether with or without compensation,
74 including firefighters who are members of a volunteer fire



75 department that is a political subdivision. The term "employee"
76 shall not mean a person or other legal entity while acting in the
77 capacity of an independent contractor under contract to the state
78 or a political subdivision; and

79 (i) For purposes of the limits of liability
80 provided for in Section 11-46-15, the term "employee" shall
81 include:

82 1. Physicians under contract to provide
83 health services with the State Board of Health, the State Board of
84 Mental Health or any county or municipal jail facility while
85 rendering services under the contract;

86 2. Any physician, dentist or other health
87 care practitioner employed by the University of Mississippi
88 Medical Center (UMMC) and its departmental practice plans who is a
89 faculty member and provides health care services only for patients
90 at UMMC or its affiliated practice sites;

91 3. Any physician, dentist or other health
92 care practitioner employed by any university under the control of
93 the Board of Trustees of State Institutions of Higher Learning who
94 practices only on the campus of any university under the control
95 of the Board of Trustees of State Institutions of Higher Learning;

96 4. Any physician, dentist or other health
97 care practitioner employed by the State Veterans Affairs Board and
98 who provides health care services for patients for the State
99 Veterans Affairs Board;



100 (ii) The term "employee" shall also include
101 Mississippi Department of Human Services licensed foster parents
102 for the limited purposes of coverage under the Tort Claims Act as
103 provided in Section 11-46-8; and

104 (iii) The term "employee" also shall include any
105 employee or member of the governing board of a charter school but
106 shall not include any person or entity acting in the capacity of
107 an independent contractor to provide goods or services under a
108 contract with a charter school.

109 (g) "Governmental entity" means the state and political
110 subdivisions.

111 (h) "Injury" means death, injury to a person, damage to
112 or loss of property or any other injury that a person may suffer
113 that is actionable at law or in equity.

114 (i) "Political subdivision" means any body politic or
115 body corporate other than the state responsible for governmental
116 activities only in geographic areas smaller than that of the
117 state, including, but not limited to, any county, municipality,
118 school district, charter school, volunteer fire department that is
119 a chartered nonprofit corporation providing emergency services
120 under contract with a county or municipality, community hospital
121 as defined in Section 41-13-10, airport authority, or other
122 instrumentality of the state, whether or not the body or
123 instrumentality has the authority to levy taxes or to sue or be
124 sued in its own name.



125 (j) "State" means the State of Mississippi and any
126 office, department, agency, division, bureau, commission, board,
127 institution, hospital, college, university, airport authority or
128 other instrumentality thereof, whether or not the body or
129 instrumentality has the authority to levy taxes or to sue or be
130 sued in its own name.

131 (k) "Law" means all species of law, including, but not
132 limited to, any and all constitutions, statutes, case law, common
133 law, customary law, court order, court rule, court decision, court
134 opinion, court judgment or mandate, administrative rule or
135 regulation, executive order, or principle or rule of equity.

136 **SECTION 3.** Section 11-46-9, Mississippi Code of 1972, is
137 brought forward as follows:

138 11-46-9. (1) A governmental entity and its employees acting
139 within the course and scope of their employment or duties shall
140 not be liable for any claim:

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

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



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

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

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

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

163 (g) Arising out of the exercise of discretion in
164 determining whether or not to seek or provide the resources
165 necessary for the purchase of equipment, the construction or
166 maintenance of facilities, the hiring of personnel and, in
167 general, the provision of adequate governmental services;

168 (h) Arising out of the issuance, denial, suspension or
169 revocation of, or the failure or refusal to issue, deny, suspend
170 or revoke any privilege, ticket, pass, permit, license,
171 certificate, approval, order or similar authorization where the
172 governmental entity or its employee is authorized by law to
173 determine whether or not such authorization should be issued,



174 denied, suspended or revoked unless such issuance, denial,
175 suspension or revocation, or failure or refusal thereof, is of a
176 malicious or arbitrary and capricious nature;

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

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

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

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

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

195 (n) Arising out of any work performed by a person
196 convicted of a crime when the work is performed pursuant to any
197 sentence or order of any court or pursuant to laws of the State of
198 Mississippi authorizing or requiring such work;



199 (o) Under circumstances where liability has been or is
200 hereafter assumed by the United States, to the extent of such
201 assumption of liability, including, but not limited to, any claim
202 based on activities of the Mississippi National Guard when such
203 claim is cognizable under the National Guard Tort Claims Act of
204 the United States, 32 USCS 715 (32 USCS 715), or when such claim
205 accrues as a result of active federal service or state service at
206 the call of the Governor for quelling riots and civil
207 disturbances;

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

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

221 (r) Arising out of the lack of adequate personnel or
222 facilities at a state hospital or state corrections facility if



223 reasonable use of available appropriations has been made to
224 provide such personnel or facilities;

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

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

229 (u) Arising out of or resulting from riots, unlawful
230 assemblies, unlawful public demonstrations, mob violence or civil
231 disturbances;

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

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

246 (x) Arising out of the administration of corporal
247 punishment or the taking of any action to maintain control and



248 discipline of students, as defined in Section 37-11-57, by a
249 teacher, assistant teacher, principal or assistant principal of a
250 public school district in the state unless the teacher, assistant
251 teacher, principal or assistant principal acted in bad faith or
252 with malicious purpose or in a manner exhibiting a wanton and
253 willful disregard of human rights or safety; or

254 (y) Arising out of the construction, maintenance or
255 operation of any highway, bridge or roadway project entered into
256 by the Mississippi Transportation Commission or other governmental
257 entity and a company under the provisions of Section 65-43-1 or
258 65-43-3, where the act or omission occurs during the term of any
259 such contract.

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

- 262 (a) Is inactive and dormant;
263 (b) Receives no revenue;
264 (c) Has no employees; and
265 (d) Owns no property.

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

271 **SECTION 4.** This act shall take effect and be in force from
272 and after July 1, 2016.

