

By: Senator(s) Fillingane

To: Judiciary, Division A

SENATE BILL NO. 2438

1 AN ACT TO AMEND SECTION 95-13-1, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE A LIMITATION OF LIABILITY FOR LOCAL GOVERNMENT-OWNED  
3 SHOOTING RANGES, AND TO PROVIDE EXCEPTIONS; TO BRING FORWARD  
4 SECTION 11-46-9, MISSISSIPPI CODE OF 1972, TO AMEND IN CONFORMITY  
5 THERETO; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 95-13-1, Mississippi Code of 1972, is  
8 amended as follows:

9 95-13-1. (1) As used in this section, unless the context  
10 otherwise requires:

11 (a) "Local unit of government" means a county,  
12 municipality or other entity of local government;

13 (b) "Person" means an individual, proprietorship,  
14 partnership, corporation, club, or other legal entity; and

15 (c) "Sport-shooting range" or "range" or "shooting  
16 range" means an area designed and operated for the use of rifles,  
17 shotguns, pistols, silhouettes, skeet, trap, black powder or any  
18 other similar sport or practice shooting \* \* \* that complies with



19 the provisions of subsection (3) or subsection (4) of this  
20 section.

21 (2) (a) Notwithstanding any other provision of law to the  
22 contrary, a person who operates or uses a sport-shooting range in  
23 this state is not subject to civil liability or criminal  
24 prosecution for noise or noise pollution resulting from the  
25 operation or use of the range if the range is in compliance with  
26 all noise control laws, resolutions, ordinances or regulations,  
27 issued by a local unit of government, that applied to the range  
28 and its operation at the time the range was constructed and began  
29 operation.

30 (b) A person who operates or uses a sport-shooting  
31 range is not subject to an action for nuisance, and a court of the  
32 state shall not enjoin the use or operation of a range on the  
33 basis of noise or noise pollution, if the range is in compliance  
34 with all noise control laws, resolutions, ordinances or  
35 regulations issued by a unit of local government that applied to  
36 the range and its operation at the time the range was constructed  
37 and began operation.

38 (c) A person who subsequently acquires title to or who  
39 owns real property adversely affected by the use of property with  
40 a permanently located and improved range shall not maintain a  
41 nuisance action against the person who owns the range to restrain,  
42 enjoin or impede the use of the range where there has not been a



43 substantial change in the nature of the use of the range or by a  
44 person using the range.

45 (d) Rules or regulations adopted by any state  
46 department or agency for limiting levels of noise in terms of  
47 described level which may occur in the outdoor atmosphere shall not  
48 apply to a sport-shooting range exempted from liability under this  
49 section.

50 (e) Notwithstanding any other provision of law to the  
51 contrary, nothing in this section shall be construed to limit  
52 civil liability except in the limited case of noise pollution.

53 (3) (a) In order to qualify for the limitation of liability  
54 afforded by this section, a sport-shooting range must be located  
55 wholly within a tract or parcel of land consisting of not less  
56 than three hundred twenty (320) contiguous acres. All persons  
57 owning property any part of which lies within one thousand (1,000)  
58 yards of any boundary of the sport-shooting range property shall  
59 have standing to appear and object to the location of the  
60 sport-shooting range at a hearing to be conducted by the  
61 Industrial Development Authority Board.

62 (b) The person seeking to operate the range and secure  
63 the limitation of liability afforded by this section shall bear  
64 the expense of the hearing and other costs associated therewith.

65 (c) Actual notice shall be afforded to all persons  
66 having standing to object if the identity and addresses of those  
67 persons can be determined by examining the property tax records of



68 the county. Actual notice shall be made in writing mailed via  
69 first class mail, postage prepaid, not less than thirty (30) days  
70 prior to the date set for the hearing.

71 (d) Publication shall be made in a newspaper of general  
72 circulation in the county once a week for three (3) weeks, the  
73 first such publication to be made not less than thirty (30) days  
74 prior to the date of the hearing.

75 (e) Claims of persons who do not appear and object  
76 shall be barred as provided in this section.

77 (f) Notwithstanding any provision of this section to  
78 the contrary, the cause of action of any person owning property in  
79 the vicinity of the proposed range and having standing to object  
80 prior to the time of the hearing shall not be barred by the  
81 provisions of this section provided the property owner registers  
82 his complaint with the board at or before the hearing.

83 ( \* \* \*g) The provisions of this subsection (3) shall  
84 apply only in a county bordering the State of Tennessee wherein  
85 U.S. Highway 78 intersects State Highway 7 and in a county where  
86 U.S. Highway 61 and State Highway 4 intersect.

87 (4) (a) A shooting range owned and operated by a local unit  
88 of government shall not be liable for an injury to or the death of  
89 a participant resulting from the inherent risks of shooting-range  
90 activities.

91 (b) Nothing in this subsection shall prevent or limit  
92 liability of an individual based upon an act or omission that



93 constitutes willful or wanton disregard for the safety of the  
94 participant if that act or omission caused the injury or based  
95 upon an intentional injury of the participant.

96 **SECTION 2.** Section 11-46-9, Mississippi Code of 1972, is  
97 brought forward as follows:

98 11-46-9. (1) A governmental entity and its employees acting  
99 within the course and scope of their employment or duties shall  
100 not be liable for any claim:

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

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

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

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



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

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

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

123 (g) Arising out of the exercise of discretion in  
124 determining whether or not to seek or provide the resources  
125 necessary for the purchase of equipment, the construction or  
126 maintenance of facilities, the hiring of personnel and, in  
127 general, the provision of adequate governmental services;

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

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

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



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

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

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

155           (n) Arising out of any work performed by a person  
156 convicted of a crime when the work is performed pursuant to any  
157 sentence or order of any court or pursuant to laws of the State of  
158 Mississippi authorizing or requiring such work;

159           (o) Under circumstances where liability has been or is  
160 hereafter assumed by the United States, to the extent of such  
161 assumption of liability, including, but not limited to, any claim  
162 based on activities of the Mississippi National Guard when such  
163 claim is cognizable under the National Guard Tort Claims Act of  
164 the United States, 32 USCS 715 (32 USCS 715), or when such claim  
165 accrues as a result of active federal service or state service at



166 the call of the Governor for quelling riots and civil  
167 disturbances;

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

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

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

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

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



189           (u) Arising out of or resulting from riots, unlawful  
190 assemblies, unlawful public demonstrations, mob violence or civil  
191 disturbances;

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

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

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



214 (y) Arising out of the construction, maintenance or  
215 operation of any highway, bridge or roadway project entered into  
216 by the Mississippi Transportation Commission or other governmental  
217 entity and a company under the provisions of Section 65-43-1 or  
218 65-43-3, where the act or omission occurs during the term of any  
219 such contract.

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

222 (a) Is inactive and dormant;

223 (b) Receives no revenue;

224 (c) Has no employees; and

225 (d) Owns no property.

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

231 **SECTION 3.** This act shall take effect and be in force from  
232 and after July 1, 2017.

