

By: Representative Wooten

To: Judiciary A

HOUSE BILL NO. 573

1 AN ACT TO AMEND SECTION 11-46-9, MISSISSIPPI CODE OF 1972, TO
2 EXCLUDE POLICE ACTIVITIES THAT RESULT IN SERIOUS INJURY OR DEATH
3 OF ANOTHER PERSON FROM THE LIST OF SPECIFIED CIRCUMSTANCES FROM
4 WHICH A GOVERNMENTAL ENTITY IS EXEMPT LIABILITY; TO BRING FORWARD
5 SECTION 11-46-5, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF
6 AMENDMENT; AND FOR RELATED PURPOSES.

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

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

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

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

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



21 (c) Arising out of any act or omission of an employee
22 of a governmental entity engaged in the performance or execution
23 of duties or activities relating to police or fire protection
24 unless the employee acted in reckless disregard of the safety and
25 well-being of any person not engaged in criminal activity at the
26 time of injury; and/or unless the duties or activities relating to
27 the police action resulted in the serious injury or death of
28 another person due to simple negligence of the officer;

29 (d) Based upon the exercise or performance or the
30 failure to exercise or perform a discretionary function or duty on
31 the part of a governmental entity or employee thereof, whether or
32 not the discretion be abused;

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

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

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

42 (h) Arising out of the issuance, denial, suspension or
43 revocation of, or the failure or refusal to issue, deny, suspend
44 or revoke any privilege, ticket, pass, permit, license,
45 certificate, approval, order or similar authorization where the



46 governmental entity or its employee is authorized by law to
47 determine whether or not such authorization should be issued,
48 denied, suspended or revoked unless such issuance, denial,
49 suspension or revocation, or failure or refusal thereof, is of a
50 malicious or arbitrary and capricious nature;

51 (i) Arising out of the assessment or collection of any
52 tax or fee;

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

56 (k) Arising out of the imposition or establishment of a
57 quarantine, whether such quarantine relates to persons or
58 property;

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

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

69 (n) Arising out of any work performed by a person
70 convicted of a crime when the work is performed pursuant to any



71 sentence or order of any court or pursuant to laws of the State of
72 Mississippi authorizing or requiring such work;

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

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

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



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

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

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

103 (u) Arising out of or resulting from riots, unlawful
104 assemblies, unlawful public demonstrations, mob violence or civil
105 disturbances;

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

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



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

128 (y) Arising out of the construction, maintenance or
129 operation of any highway, bridge or roadway project entered into
130 by the Mississippi Transportation Commission or other governmental
131 entity and a company under the provisions of Section 65-43-1 or
132 65-43-3, where the act or omission occurs during the term of any
133 such contract.

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

- 136 (a) Is inactive and dormant;
- 137 (b) Receives no revenue;
- 138 (c) Has no employees; and
- 139 (d) Owns no property.

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



145 **SECTION 2.** Section 11-46-5, Mississippi Code of 1972, is
146 brought forward as follows:

147 11-46-5. (1) Notwithstanding the immunity granted in
148 Section 11-46-3, or the provisions of any other law to the
149 contrary, the immunity of the state and its political subdivisions
150 from claims for money damages arising out of the torts of such
151 governmental entities and the torts of their employees while
152 acting within the course and scope of their employment is hereby
153 waived from and after July 1, 1993, as to the state, and from and
154 after October 1, 1993, as to political subdivisions; provided,
155 however, immunity of a governmental entity in any such case shall
156 be waived only to the extent of the maximum amount of liability
157 provided for in Section 11-46-15.

158 (2) For the purposes of this chapter an employee shall not
159 be considered as acting within the course and scope of his
160 employment and a governmental entity shall not be liable or be
161 considered to have waived immunity for any conduct of its employee
162 if the employee's conduct constituted fraud, malice, libel,
163 slander, defamation or any criminal offense other than traffic
164 violations.

165 (3) For the purposes of this chapter and not otherwise, it
166 shall be a rebuttable presumption that any act or omission of an
167 employee within the time and at the place of his employment is
168 within the course and scope of his employment.



169 (4) Nothing contained in this chapter shall be construed to
170 waive the immunity of the state from suit in federal courts
171 guaranteed by the Eleventh Amendment to the Constitution of the
172 United States.

173 **SECTION 3.** This act shall take effect and be in force from
174 and after July 1, 2018.

