

By: Representative Rushing

To: Judiciary B

HOUSE BILL NO. 9

1 AN ACT TO AMEND SECTION 11-46-9, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE IMMUNITY FOR LAW ENFORCEMENT OFFICERS WHEN THE PERSON
3 FILING THE CLAIM AGAINST THE OFFICER WAS CONVICTED FOR RESISTING
4 ARREST AND THE INCIDENT WAS CLEARLY RECORDED BY THE OFFICER; AND
5 FOR RELATED PURPOSES.

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

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

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

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

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



20 (c) Arising out of any act or omission of an employee
21 of a governmental entity engaged in the performance or execution
22 of duties or activities relating to police or fire protection
23 unless the employee acted in reckless disregard of the safety and
24 well-being of any person not engaged in criminal activity at the
25 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, or when such claim accrues as a
76 result of active federal service or state service at the call of
77 the Governor for quelling riots and civil disturbances;

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

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

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



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

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

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

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

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

116 (x) Arising out of the administration of corporal
117 punishment or the taking of any action to maintain control and
118 discipline of students, as defined in Section 37-11-57, by a
119 teacher, assistant teacher, principal or assistant principal of a



120 public school district in the state unless the teacher, assistant
121 teacher, principal or assistant principal acted in bad faith or
122 with malicious purpose or in a manner exhibiting a wanton and
123 willful disregard of human rights or safety; * * *

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

130 (z) Arising out of a claim on behalf of a person who
131 was convicted for resisting the arrest of the officer so charged,
132 if: (i) the person bringing the action against the officer was
133 convicted for resisting arrest during the action described in the
134 petition against the officer, (ii) the complete incident for which
135 the officer is being sued was recorded by audio or video and is
136 clearly visible or audible by the court that exonerates the
137 officer, and (iii) the civil charge against the law enforcement
138 officer is only excessive use of force. For purposes of this
139 section, the phrase "excessive force" does not include murder,
140 capital murder or manslaughter as defined by state law.

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

143 (a) Is inactive and dormant;

144 (b) Receives no revenue;



145 (c) Has no employees; and

146 (d) Owns no property.

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

152 **SECTION 2.** This act shall take effect and be in force from
153 and after July 1, 2022.

