

By: Representatives Bennett, Felsher, Newman To: Judiciary A

HOUSE BILL NO. 172

1 AN ACT TO CREATE THE "MISSISSIPPI ARCHITECTS AND ENGINEERS
2 GOOD SAMARITAN ACT"; TO PROVIDE IMMUNITY FROM LIABILITY FOR ANY
3 CIVIL ACTIONS ARISING FROM WORK PERFORMED BY ARCHITECTS OR
4 ENGINEERS AT THE REQUEST OF AN ELECTED OFFICIAL DURING A STATE OF
5 EMERGENCY; TO PROVIDE THAT THE IMMUNITY PROVIDED BY THIS ACT SHALL
6 ONLY APPLY TO SAFETY ASSESSMENT SERVICES; TO BRING FORWARD SECTION
7 11-46-9, WHICH EXEMPTS GOVERNMENTAL ENTITIES FROM LIABILITY UNDER
8 CERTAIN CIRCUMSTANCES FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR
9 RELATED PURPOSES.

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

11 **SECTION 1.** (1) This act shall be known and may be cited as
12 the "Mississippi Architects and Engineers Good Samaritan Act."

13 (2) As used in this act, the following words shall have the
14 meanings described in this section:

15 (a) "Building inspection official" means any appointed
16 or elected federal, state, or local official with executive
17 responsibility to coordinate building inspection in the
18 jurisdiction in which the emergency or event has occurred;

19 (b) "Emergency" means an earthquake, eruption, flood,
20 storm, hurricane, fire or other catastrophe that has been
21 designated as a major disaster or emergency by the President of



22 the United States, the Governor, or other public official, and
23 shall include the terms "State of Emergency" and "Local emergency"
24 as defined in Section 33-15-5;

25 (c) "Good Samaritan" means a professional engineer or a
26 registered architect who performs safety assessment services only,
27 and who provides such services uncompensated (other than
28 reimbursement of expenses) at the scene of an emergency;

29 (d) "Law enforcement official" means any appointed or
30 elected federal, state, or local official with executive
31 responsibility to coordinate law enforcement in the jurisdiction
32 in which the emergency or event has occurred;

33 (e) "Professional engineer" means a person duly
34 licensed under the engineering licensure laws of a United States
35 or Canadian jurisdiction as a professional engineer;

36 (f) "Public official" means any federal, state, or
37 local official with executive responsibility in the jurisdiction
38 in which the emergency or event has occurred;

39 (g) "Public safety official" means any appointed or
40 elected federal, state, or local official with executive
41 responsibility to coordinate public safety in the jurisdiction in
42 which the emergency or event has occurred;

43 (h) "Registered architect" means a person duly licensed
44 under the architectural licensure laws of a United States or
45 Canadian jurisdiction as a registered architect; and



46 (i) "Safety assessment services" means inspection and
47 evaluation of any structure, building, facility, project utility,
48 equipment, machine, process, piping, or other system at the scene
49 of an emergency related to structural integrity or nonstructural
50 elements affecting life, safety and habitability.

51 (3) (a) Any registered architect or professional engineer
52 who provides safety assessment services as a Good Samaritan at the
53 request of or with the approval of a public official, law
54 enforcement official, public safety official, or building
55 inspection official acting in his or her official capacity as such
56 shall be immune from liability from any civil action arising only
57 from an act, service or omission performed in the course of
58 providing safety assessment services as a Good Samaritan. The
59 immunity provided in this act shall apply only to safety
60 assessment services if, such services: (i) occurred during the
61 emergency or within ninety (90) days following the end of the
62 period for the emergency, unless extended by an executive order;
63 and (ii) if the architect or engineer was acting as a reasonably
64 prudent person would have acted under the same or similar
65 circumstances during a period of declared emergency, to include
66 any other loss of any other nature related to the registered
67 architect's or professional engineer's acts, errors or omissions
68 in the performance of any architectural or engineering services
69 for any structure, building or facility during the declared period
70 of emergency.



71 (b) Architectural or engineering services beyond safety
72 assessment services including, but not limited to, design of
73 repairs, demolition plans, construction documents, or construction
74 administration shall only be undertaken by an architect or
75 professional engineer licensed in Mississippi.

76 (c) Nothing in this act shall be construed to provide
77 immunity for wanton, willful, or intentional misconduct.

78 (4) Any architect or professional engineer not licensed in
79 this state acting within the confines of this act as a Good
80 Samaritan in order to perform safety assessment services shall be
81 exempted from being required to be licensed as an architect or
82 professional engineer in the State of Mississippi, but only to the
83 extent of the services rendered for the period of time as provided
84 for in subsection (4) of this act.

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

87 11-46-9. (1) A governmental entity and its employees acting
88 within the course and scope of their employment or duties shall
89 not be liable for any claim:

90 (a) Arising out of a legislative or judicial action or
91 inaction, or administrative action or inaction of a legislative or
92 judicial nature;

93 (b) Arising out of any act or omission of an employee
94 of a governmental entity exercising ordinary care in reliance
95 upon, or in the execution or performance of, or in the failure to



96 execute or perform, a statute, ordinance or regulation, whether or
97 not the statute, ordinance or regulation be valid;

98 (c) Arising out of any act or omission of an employee
99 of a governmental entity engaged in the performance or execution
100 of duties or activities relating to police or fire protection
101 unless the employee acted in reckless disregard of the safety and
102 well being of any person not engaged in criminal activity at the
103 time of injury;

104 (d) Based upon the exercise or performance or the
105 failure to exercise or perform a discretionary function or duty on
106 the part of a governmental entity or employee thereof, whether or
107 not the discretion be abused;

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

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

112 (g) Arising out of the exercise of discretion in
113 determining whether or not to seek or provide the resources
114 necessary for the purchase of equipment, the construction or
115 maintenance of facilities, the hiring of personnel and, in
116 general, the provision of adequate governmental services;

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



121 governmental entity or its employee is authorized by law to
122 determine whether or not such authorization should be issued,
123 denied, suspended or revoked unless such issuance, denial,
124 suspension or revocation, or failure or refusal thereof, is of a
125 malicious or arbitrary and capricious nature;

126 (i) Arising out of the assessment or collection of any
127 tax or fee;

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

131 (k) Arising out of the imposition or establishment of a
132 quarantine, whether such quarantine relates to persons or
133 property;

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

138 (m) Of any claimant who at the time the claim arises is
139 an inmate of any detention center, jail, workhouse, penal farm,
140 penitentiary or other such institution, regardless of whether such
141 claimant is or is not an inmate of any detention center, jail,
142 workhouse, penal farm, penitentiary or other such institution when
143 the claim is filed;

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



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

148 (o) Under circumstances where liability has been or is
149 hereafter assumed by the United States, to the extent of such
150 assumption of liability, including, but not limited to, any claim
151 based on activities of the Mississippi National Guard when such
152 claim is cognizable under the National Guard Tort Claims Act of
153 the United States, 32 USCS 715, or when such claim accrues as a
154 result of active federal service or state service at the call of
155 the Governor for quelling riots and civil disturbances;

156 (p) Arising out of a plan or design for construction or
157 improvements to public property, including, but not limited to,
158 public buildings, highways, roads, streets, bridges, levees,
159 dikes, dams, impoundments, drainage channels, diversion channels,
160 harbors, ports, wharfs or docks, where such plan or design has
161 been approved in advance of the construction or improvement by the
162 legislative body or governing authority of a governmental entity
163 or by some other body or administrative agency, exercising
164 discretion by authority to give such approval, and where such plan
165 or design is in conformity with engineering or design standards in
166 effect at the time of preparation of the plan or design;

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

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



171 reasonable use of available appropriations has been made to
172 provide such personnel or facilities;

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

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

177 (u) Arising out of or resulting from riots, unlawful
178 assemblies, unlawful public demonstrations, mob violence or civil
179 disturbances;

180 (v) Arising out of an injury caused by a dangerous
181 condition on property of the governmental entity that was not
182 caused by the negligent or other wrongful conduct of an employee
183 of the governmental entity or of which the governmental entity did
184 not have notice, either actual or constructive, and adequate
185 opportunity to protect or warn against; provided, however, that a
186 governmental entity shall not be liable for the failure to warn of
187 a dangerous condition which is obvious to one exercising due care;

188 (w) Arising out of the absence, condition, malfunction
189 or removal by third parties of any sign, signal, warning device,
190 illumination device, guardrail or median barrier, unless the
191 absence, condition, malfunction or removal is not corrected by the
192 governmental entity responsible for its maintenance within a
193 reasonable time after actual or constructive notice;

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



196 discipline of students, as defined in Section 37-11-57, by a
197 teacher, assistant teacher, principal or assistant principal of a
198 public school district in the state unless the teacher, assistant
199 teacher, principal or assistant principal acted in bad faith or
200 with malicious purpose or in a manner exhibiting a wanton and
201 willful disregard of human rights or safety; or

202 (y) Arising out of the construction, maintenance or
203 operation of any highway, bridge or roadway project entered into
204 by the Mississippi Transportation Commission or other governmental
205 entity and a company under the provisions of Section 65-43-1 or
206 65-43-3, where the act or omission occurs during the term of any
207 such contract.

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

- 210 (a) Is inactive and dormant;
- 211 (b) Receives no revenue;
- 212 (c) Has no employees; and
- 213 (d) Owns no property.

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

219 **SECTION 3.** This act shall take effect and be in force from
220 and after July 1, 2022.

