

By: Representative Busby

To: Judiciary A

HOUSE BILL NO. 1397

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.

