

By: Representative Hood

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1560

1 AN ACT TO AMEND SECTIONS 11-46-9 AND 11-46-11, MISSISSIPPI
2 CODE OF 1972, TO REVISE WHEN THE STATUTE OF LIMITATIONS BEGINS FOR
3 GOVERNMENTAL TORT IMMUNITY, FOR PURPOSES OF AMENDMENT; AND FOR
4 RELATED PURPOSES.

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

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

8 11-46-9. (1) A governmental entity and its employees acting
9 within the course and scope of their employment or duties shall
10 not be liable for any claim:

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

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



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; or

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.

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

- 132 (a) Is inactive and dormant;
- 133 (b) Receives no revenue;
- 134 (c) Has no employees; and
- 135 (d) Owns no property.

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

141 **SECTION 2.** Section 11-46-11, Mississippi Code of 1972, is
142 amended as follows:

143 11-46-11. (1) After all procedures within a governmental
144 entity have been exhausted, any person having a claim under this



145 chapter shall proceed as he might in any action at law or in
146 equity, except that at least ninety (90) days before instituting
147 suit, the person must file a notice of claim with the chief
148 executive officer of the governmental entity.

149 (2) (a) Service of notice of claim shall be made as
150 follows:

151 (i) For local governments:

152 1. If the governmental entity is a county,
153 then upon the chancery clerk of the county sued;

154 2. If the governmental entity is a
155 municipality, then upon the city clerk.

156 (ii) If the governmental entity to be sued is a
157 state entity as defined in Section 11-46-1(j), or is a political
158 subdivision other than a county or municipality, service of notice
159 of claim shall be had only upon that entity's or political
160 subdivision's chief executive officer. The chief executive
161 officer of a governmental entity participating in a plan
162 administered by the board pursuant to Section 11-46-7(3) shall
163 notify the board of any claims filed within five (5) days after
164 receipt thereof.

165 (b) Every notice of claim shall:

166 (i) Be in writing;

167 (ii) Be delivered in person or by registered or
168 certified United States mail; and



169 (iii) Contain a short and plain statement of the
170 facts upon which the claim is based, including the circumstances
171 which brought about the injury, the extent of the injury, the time
172 and place the injury occurred, the names of all persons known to
173 be involved, the amount of money damages sought, and the residence
174 of the person making the claim at the time of the injury and at
175 the time of filing the notice.

176 (3) (a) * * * Except as otherwise provided in this section,
177 all actions brought under this chapter shall be commenced
178 within * * * two (2) year next after the date of the tortious,
179 wrongful or otherwise actionable conduct on which the liability
180 phase of the action is based, and not after, except that filing a
181 notice of claim within the required * * * period will toll the
182 statute of limitations for ninety-five (95) days from the date the
183 chief executive officer of the state entity or the chief executive
184 officer or other statutorily designated official of a political
185 subdivision receives the notice of claim. The two (2) year
186 statute of limitations provided in this section shall not begin to
187 run until the act or omission which caused the injury is
188 discovered.

189 (b) No action whatsoever may be maintained by the
190 claimant until the claimant receives a notice of denial of claim
191 or the tolling period expires, whichever comes first, after which
192 the claimant has an additional ninety (90) days to file suit;



193 failure to file within the time allowed is an absolute bar to any
194 further proceedings under this chapter.

195 (c) All notices of denial of claim shall be served by
196 governmental entities upon claimants by certified mail, return
197 receipt requested, only.

198 (d) (i) To determine the running of limitations
199 periods under this chapter, service of any notice of claim or
200 notice of denial of claim is effective upon delivery by the
201 methods statutorily designated in this chapter.

202 (ii) The limitations period provided in this
203 section controls and shall be exclusive in all actions subject to
204 and brought under the provisions of this chapter, notwithstanding
205 the nature of the claim, the label or other characterization the
206 claimant may use to describe it, or the provisions of any other
207 statute of limitations that would otherwise govern the type of
208 claim or legal theory if it were not subject to or brought under
209 the provisions of this chapter.

210 (4) From and after April 1, 1993, if any person entitled to
211 bring any action under this chapter shall, at the time at which
212 the cause of action accrued, be under the disability of infancy or
213 unsoundness of mind, he may bring the action within the time
214 allowed in this section after his disability shall be removed as
215 provided by law. The savings in favor of persons under disability
216 of unsoundness of mind shall never extend longer than twenty-one
217 (21) years.



218 **SECTION 3.** This act shall take effect and be in force from
219 and after July 1, 2024, and shall stand repealed June 30, 2024.

