

By: Representative Hood

To: Judiciary A

HOUSE BILL NO. 1560

1 AN ACT TO BRING FORWARD SECTIONS 11-46-9 AND 11-46-11,
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR GOVERNMENTAL TORT
3 IMMUNITY, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 11-46-9, Mississippi Code of 1972, is
6 brought forward as follows:

7 11-46-9. (1) A governmental entity and its employees acting
8 within the course and scope of their employment or duties shall
9 not be liable for any claim:

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

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



18 (c) Arising out of any act or omission of an employee
19 of a governmental entity engaged in the performance or execution
20 of duties or activities relating to police or fire protection
21 unless the employee acted in reckless disregard of the safety and
22 well-being of any person not engaged in criminal activity at the
23 time of injury;

24 (d) Based upon the exercise or performance or the
25 failure to exercise or perform a discretionary function or duty on
26 the part of a governmental entity or employee thereof, whether or
27 not the discretion be abused;

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

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

32 (g) Arising out of the exercise of discretion in
33 determining whether or not to seek or provide the resources
34 necessary for the purchase of equipment, the construction or
35 maintenance of facilities, the hiring of personnel and, in
36 general, the provision of adequate governmental services;

37 (h) Arising out of the issuance, denial, suspension or
38 revocation of, or the failure or refusal to issue, deny, suspend
39 or revoke any privilege, ticket, pass, permit, license,
40 certificate, approval, order or similar authorization where the
41 governmental entity or its employee is authorized by law to
42 determine whether or not such authorization should be issued,



43 denied, suspended or revoked unless such issuance, denial,
44 suspension or revocation, or failure or refusal thereof, is of a
45 malicious or arbitrary and capricious nature;

46 (i) Arising out of the assessment or collection of any
47 tax or fee;

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

51 (k) Arising out of the imposition or establishment of a
52 quarantine, whether such quarantine relates to persons or
53 property;

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

58 (m) Of any claimant who at the time the claim arises is
59 an inmate of any detention center, jail, workhouse, penal farm,
60 penitentiary or other such institution, regardless of whether such
61 claimant is or is not an inmate of any detention center, jail,
62 workhouse, penal farm, penitentiary or other such institution when
63 the claim is filed;

64 (n) Arising out of any work performed by a person
65 convicted of a crime when the work is performed pursuant to any
66 sentence or order of any court or pursuant to laws of the State of
67 Mississippi authorizing or requiring such work;



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

139 **SECTION 2.** Section 11-46-11, Mississippi Code of 1972, is
140 brought forward as follows:

141 11-46-11. (1) After all procedures within a governmental
142 entity have been exhausted, any person having a claim under this



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

147 (2) (a) Service of notice of claim shall be made as
148 follows:

149 (i) For local governments:

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

152 2. If the governmental entity is a
153 municipality, then upon the city clerk.

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

163 (b) Every notice of claim shall:

164 (i) Be in writing;

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



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

174 (3) (a) All actions brought under this chapter shall be
175 commenced within one (1) year next after the date of the tortious,
176 wrongful or otherwise actionable conduct on which the liability
177 phase of the action is based, and not after, except that filing a
178 notice of claim within the required one-year period will toll the
179 statute of limitations for ninety-five (95) days from the date the
180 chief executive officer of the state entity or the chief executive
181 officer or other statutorily designated official of a political
182 subdivision receives the notice of claim.

183 (b) No action whatsoever may be maintained by the
184 claimant until the claimant receives a notice of denial of claim
185 or the tolling period expires, whichever comes first, after which
186 the claimant has an additional ninety (90) days to file suit;
187 failure to file within the time allowed is an absolute bar to any
188 further proceedings under this chapter.

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



192 (d) (i) To determine the running of limitations
193 periods under this chapter, service of any notice of claim or
194 notice of denial of claim is effective upon delivery by the
195 methods statutorily designated in this chapter.

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

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

212 **SECTION 3.** This act shall take effect and be in force from
213 and after July 1, 2024.

