

By: Representative Bourdeaux

To: Judiciary A

HOUSE BILL NO. 658

1 AN ACT TO AMEND SECTION 11-46-9, MISSISSIPPI CODE OF 1972, TO  
2 EXEMPT FROM LIABILITY ANY PROBLEMS CAUSED BY COMPUTER MALFUNCTIONS  
3 RESULTING FROM THE CENTURY DATE CHANGE TO THE YEAR 2000; 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;

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

25 (d) Based upon the exercise or performance or the  
26 failure to exercise or perform a discretionary function or duty on  
27 the part of a governmental entity or employee thereof, whether or

28 not the discretion be abused;

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

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

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

38 (h) Arising out of the issuance, denial, suspension or  
39 revocation of, or the failure or refusal to issue, deny, suspend  
40 or revoke any privilege, ticket, pass, permit, license,  
41 certificate, approval, order or similar authorization where the  
42 governmental entity or its employee is authorized by law to  
43 determine whether or not such authorization should be issued,  
44 denied, suspended or revoked unless such issuance, denial,  
45 suspension or revocation, or failure or refusal thereof, is of a  
46 malicious or arbitrary and capricious nature;

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

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

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

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

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

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

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

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

125 (y) Arising out of any problems caused by computer  
126 malfunctions resulting from the century date change to the year  
127 2000.

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. This act shall take effect and be in force from  
140 and after July 1, 1999.